

**JAMES D. KINSEY - April 22, 2022**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FRANCISCO CANTU, ET AL.,

PLAINTIFFS,

VS.

MAMMOTH ENERGY SERVICES,  
INC., ET AL.,

DEFENDANTS.

CIVIL ACTION NO.

5:19-CV-00615

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VIDEOTAPED ORAL DEPOSITION OF

JAMES D. KINSEY

APRIL 22, 2022

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VIDEOTAPED ORAL DEPOSITION OF JAMES D. KINSEY,  
produced as a witness at the instance of the Plaintiffs,  
and duly sworn, was taken in the above-styled and  
numbered cause on the 22nd day of April 2022, from 9:43  
a.m. to 3:42 p.m., before Jill Allen, CSR, in and for  
the State of Texas, reported by computerized machine  
shorthand, at the offices of Court Reporters  
Clearinghouse - Executive Workspace, 777 Main Street,  
Suite 600, in the City of Fort Worth, County of Tarrant,  
pursuant to Notice and the Federal Rules of Civil  
Procedure and the provisions stated on the record or  
attached hereto.

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<p>1 A P P E A R A N C E S</p> <p>2 (All parties appeared remotely via Zoom)</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 MR. DAVID I. MOULTON</p> <p>5 BRUCKNER &amp; BURCH, LLC</p> <p>6 11 Greenway Plaza, Suite 3025</p> <p>7 Houston, Texas 77046</p> <p>8 713.877.8788</p> <p>9 713.877.8065 FAX</p> <p>10 Email: dmoulton@brucknerburcb.com</p> <p>11 FOR THE DEFENDANTS, MAMMOTH ENERGY SERVICES, INC. and</p> <p>12 HIGHER POWER ELECTRICAL, LLC:</p> <p>13 MR. WILLIAM R. STUKENBERG</p> <p>14 MR. M. HARRIS STAMEY</p> <p>15 PORTER HEDGES</p> <p>16 1000 Main Street, 36th Floor</p> <p>17 Houston, Texas 77002</p> <p>18 713.226.6000</p> <p>19 713.228.1331 FAX</p> <p>20 Email: wstukenberg@porterhedges.com</p> <p>21 FOR THE WITNESS, JAMES D. KINSEY:</p> <p>22 MR. MICHAEL J. LOMBARDINO</p> <p>23 REED SMITH</p> <p>24 811 Main Street, Suite 1700</p> <p>25 Houston, Texas 77002</p> <p>713.469.3800</p> <p>713.469.3800 FAX</p> <p>Email: mlombardino@reedsmith.com</p> <p>ALSO PRESENT: Sonja Pendergast, Videographer (in-person)</p> <p>Anthony Argeaga (via Zoom)</p>	<p>EXHIBIT INDEX CON'T.</p> <p>NUMBER DESCRIPTION PAGE</p> <p>EXHIBIT 219 - Earnings statements.....115</p> <p>EXHIBIT 220 - Email to Missy Davis from Gerry Morgan,</p> <p>5/25/2018.....122</p> <p>EXHIBIT 221 - Earnings Statement for Patrick</p> <p>Chappell.....144</p> <p>*****</p> <p>PREVIOUSLY MARKED EXHIBITS</p> <p>EXHIBIT 137 - Pay class/pay scale for workers Excel</p> <p>spreadsheet.....29</p> <p>EXHIBIT 138 - 5 Star orientation letter.....31</p> <p>EXHIBIT 139 - Higher Power welcome letter with</p> <p>attached wage scale.....31</p> <p>EXHIBIT 151 - Cobra Energy Services crew wage scale</p> <p>for 2017.....38</p> <p>EXHIBIT 165 - Email string between JD Kinsey, Jeff</p> <p>Beagle, Ken Kinsey and Alex Kalman,</p> <p>11/21/2017.....28</p> <p>EXHIBIT 167 - Excel spreadsheet (CONFIDENTIAL).....38</p> <p>EXHIBIT 169 - Email string between JD Kinsey, Alex</p> <p>Kalman and Missy Davis, 1/9/2018.....64</p> <p>EXHIBIT 170 - Example pay stubs.....93</p> <p>EXHIBIT 172 - Email string between Jeff Beagle,</p> <p>JD Kinsey, Missy Davis, Ken Kinsey,</p> <p>And Shelly Wheeler, 1/21-22/2018.....78</p> <p>EXHIBIT 173 - Excel spreadsheet (CONFIDENTIAL).....78</p> <p>EXHIBIT 176 - Email string between JD Kinsey and</p> <p>Jeff Beagle, 11/18/2017.....32</p> <p>EXHIBIT 183 - Email string between JD Kinsey, Alex</p> <p>Kalman, Bethany Stone, Michelle Poling</p> <p>and Missy Davis, 1/21-22/2018.....70</p> <p>EXHIBIT 184 - Excel spreadsheet (CONFIDENTIAL).....73</p> <p>EXHIBIT 190 - Email string between Missy Davis and</p> <p>JD Kinsey, 7/3/2018.....91</p> <p>EXHIBIT 202 - Email string between Jeff Beagle, JD</p> <p>Kinsey, Missy Davis and Ken Kinsey,</p> <p>11/17/2017.....61</p> <p>EXHIBIT 204 - Email string between Missy Davis,</p> <p>JD Kinsey and Alex Kalman, 1/12/2018...110</p>
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<p style="text-align: right;">Page 6</p> <p>1 with my office and a paralegal helping on the case.</p> <p>2 JAMES D. KINSEY,</p> <p>3 having been first duly sworn, testified as follows:</p> <p>4 MR. LOMBARDINO: And, Dave, before we get</p> <p>5 started, I just want to say the witness reserves the</p> <p>6 right to read and sign.</p> <p>7 MR. MOULTON: Absolutely. Okay.</p> <p>8 EXAMINATION</p> <p>9 BY MR. MOULTON:</p> <p>10 Q. Okay. Good morning, Mr. Kinsey. My name is</p> <p>11 David Moulton. I represent about 150 guys who have made</p> <p>12 a claim against Mammoth, Cobra and Higher Power for</p> <p>13 overtime pay for work that they did in Puerto Rico. How</p> <p>14 are you doing this morning, sir?</p> <p>15 A. I am doing well.</p> <p>16 Q. Great. I understand when we were scheduling</p> <p>17 this deposition, that you had had a car wreck recently.</p> <p>18 How are things going with that?</p> <p>19 A. I did not have a car wreck, but I did have</p> <p>20 surgery to repair a deviated septum, and fortunately, it</p> <p>21 is going well.</p> <p>22 Q. Okay. Great. So you are perfectly fine and</p> <p>23 well today to testify, not groggy or taking medications</p> <p>24 that might mess with your memory or anything like that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 8</p> <p>1 different except that, you know, we're not in a</p> <p>2 courtroom right now, but you're under the same oath that</p> <p>3 could subject you to criminal penalties if you lie. You</p> <p>4 understand that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Now, Mr. Kinsey, what is your full name for</p> <p>7 the record?</p> <p>8 A. James Daniel Kinsey.</p> <p>9 Q. Do you go by any other names?</p> <p>10 A. Yes, sir. I go by J.D., my initials.</p> <p>11 Q. Okay. Are there any other variations that you</p> <p>12 use?</p> <p>13 A. No, sir.</p> <p>14 Q. Have you ever been arrested or convicted of</p> <p>15 any crimes?</p> <p>16 A. No, sir.</p> <p>17 Q. What did you do to prepare for your deposition</p> <p>18 today?</p> <p>19 A. Prayed.</p> <p>20 Q. Okay. You seem a little nervous. Everyone</p> <p>21 is. Please relax. We're just here to find out, you</p> <p>22 know, the truth, and we're going to have some specific</p> <p>23 questions for you today. Okay?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Did you meet with any attorneys to prepare for</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Great.</p> <p>2 Sir, have you ever given a deposition before?</p> <p>3 A. I have not.</p> <p>4 Q. If you can't already tell, there's a lot of</p> <p>5 people on the line, and there's a person, Ms. Woodruff,</p> <p>6 who's there with you in the room. She's the court</p> <p>7 reporter.</p> <p>8 MR. MOULTON: And you're there, right,</p> <p>9 Ms. Woodruff? Are you --</p> <p>10 THE REPORTER: Yeah.</p> <p>11 MR. MOULTON: -- remote?</p> <p>12 THE REPORTER: I'm here in the room with</p> <p>13 him, yes.</p> <p>14 MR. MOULTON: Okay. Great.</p> <p>15 Q. But the point is, is that it's her job to</p> <p>16 write down everything that's being said, and so I will</p> <p>17 promise to you that I will make my best effort to not</p> <p>18 talk over you or interrupt, and I'll ask that you wait</p> <p>19 for the question to be -- to wait till we finish the</p> <p>20 question before you start answering, and that way we</p> <p>21 don't have folks talking over each other and making life</p> <p>22 difficult for Ms. Woodruff. Does that make sense?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And you understand today that the testimony</p> <p>25 you're giving is just like you're in court. It's no</p>	<p style="text-align: right;">Page 9</p> <p>1 your deposition today?</p> <p>2 A. I discussed with my representative, Michael.</p> <p>3 Q. And when was that?</p> <p>4 A. We talked earlier this week.</p> <p>5 Q. And for about how long did y'all speak?</p> <p>6 A. Total, possibly two hours.</p> <p>7 Q. Okay. Besides speaking with your lawyer --</p> <p>8 and I don't want to know what y'all talked about -- did</p> <p>9 you talk to anyone else about this deposition?</p> <p>10 A. No, sir.</p> <p>11 Q. Okay. Have you been contacted by anyone at</p> <p>12 Mammoth or Higher Power or 5 Star about this case?</p> <p>13 A. Only to be informed of its existence.</p> <p>14 Q. Okay. And who did you speak with?</p> <p>15 A. I do not remember.</p> <p>16 Q. What did y'all -- about how long ago was it?</p> <p>17 A. Couple weeks.</p> <p>18 Q. Okay. Was it Mr. Layton that reached out to</p> <p>19 you?</p> <p>20 A. No, sir.</p> <p>21 Q. Can you tell me who it was?</p> <p>22 A. I don't remember. It's been a couple weeks.</p> <p>23 Q. How long did y'all speak for?</p> <p>24 A. Just a few minutes. Just enough to make sure</p> <p>25 that I was aware of what was taking place.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. Oh, I see.</p> <p>2 Did you speak about this case at all with your</p> <p>3 father?</p> <p>4 A. Only to let him know that it was taking place.</p> <p>5 Q. Okay. And who is your father?</p> <p>6 A. His name is Kenneth Kinsey.</p> <p>7 Q. He also worked for one of the Mammoth</p> <p>8 affiliates during the Puerto Rico time, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Which company did he work for?</p> <p>11 A. He was employed by Cobra Energy.</p> <p>12 Q. Did he work for any other companies that were</p> <p>13 affiliated with Mammoth or Cobra?</p> <p>14 A. No, sir.</p> <p>15 Q. During the time the workers in this case were</p> <p>16 working in Puerto Rico, which started around October</p> <p>17 2017 and went on for a couple of years, you were also</p> <p>18 working for one of the Mammoth companies, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Which one were you working for?</p> <p>21 A. Cobra Energy.</p> <p>22 Q. And do you recall when it was that you got</p> <p>23 hired?</p> <p>24 A. I do not remember the specific date.</p> <p>25 Q. Okay. Where do you work now?</p>	<p style="text-align: right;">Page 12</p> <p>1 for most of them, we're going to be doing this anyway.</p> <p>2 Just on this one I wasn't. But I'll take</p> <p>3 Mr. Lombardino's advice here, is that we can start at</p> <p>4 the bottom of this exhibit and kind of scroll up and get</p> <p>5 you familiar with it before we start asking questions</p> <p>6 about it. Is that fair?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And can you see clearly on the screen this</p> <p>9 exhibit I'm showing which is Exhibit 207?</p> <p>10 A. Yes, sir.</p> <p>11 Q. So we're at the bottom of this. I'll scroll</p> <p>12 up when you tell me you're ready. How's that?</p> <p>13 A. I'm ready, yes, sir. Yes, sir, I'm ready.</p> <p>14 Yes, sir.</p> <p>15 Q. So you've had a chance to review Exhibit 207</p> <p>16 now?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is Exhibit 207 your LinkedIn profile?</p> <p>19 A. It appears to be, yes, sir.</p> <p>20 Q. And when you review this, is it your</p> <p>21 understanding that this is accurate as far as employers</p> <p>22 and dates and your positions?</p> <p>23 A. To the best extent that I can remember, yes,</p> <p>24 sir.</p> <p>25 Q. Okay. When you went to work at Cobra, do you</p>
<p style="text-align: right;">Page 11</p> <p>1 A. I work for a company called True Construction,</p> <p>2 doing remodel and new construction services.</p> <p>3 Q. Is that your own company?</p> <p>4 A. It is not.</p> <p>5 Q. How long have you worked for True</p> <p>6 Construction?</p> <p>7 A. Roughly three years now.</p> <p>8 Q. Okay. Is this the job that you had after</p> <p>9 working for Cobra?</p> <p>10 A. Immediately after Cobra, I did not have</p> <p>11 employment, and then the following year is when I was</p> <p>12 hired by True Construction.</p> <p>13 Q. Okay. I want to show you an exhibit that we</p> <p>14 have marked as Exhibit 207. Does this look like --</p> <p>15 MR. LOMBARDINO: Real quick before you</p> <p>16 begin, the exhibits, are you going to let the witness</p> <p>17 have control of the document, or are you going to keep</p> <p>18 it -- one thing -- not to reveal attorney-client</p> <p>19 privilege? But I can tell him, you know, review the</p> <p>20 whole document, if you're going to give him an</p> <p>21 opportunity to scroll through it or --</p> <p>22 MR. MOULTON: I don't know if I can do it,</p> <p>23 but if he wants to scroll through this, I'll be happy to</p> <p>24 do that.</p> <p>25 Q. Mr. Kinsey, for any exhibits I show you today,</p>	<p style="text-align: right;">Page 13</p> <p>1 remember how it was you got your job?</p> <p>2 A. I was approached by Ken Kinsey and was</p> <p>3 informed that Cobra needed someone to do data entry for</p> <p>4 them and asked if it was something that I would be</p> <p>5 interested in. And after thinking about it, praying</p> <p>6 about it, my wife and I agreed that it would be a good</p> <p>7 opportunity.</p> <p>8 Q. Okay. So this is an opportunity that was</p> <p>9 available to you through your father, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And for data entry, what type of data</p> <p>12 entry were you going to be working with?</p> <p>13 A. There was not -- initially, there was not a</p> <p>14 specific category. It was just whenever the office</p> <p>15 staff needed, I would help with.</p> <p>16 Q. I see. Let's go ahead and look at 207, and</p> <p>17 let's look at your entry here for Cobra Energy where you</p> <p>18 were the -- it says you're a compliance coordinator. Do</p> <p>19 you see where I'm looking at?</p> <p>20 A. Yes, sir.</p> <p>21 Q. So you were the compliance coordinator with</p> <p>22 Cobra Energy from October 2017 to August 2018, correct?</p> <p>23 A. The compliance coordinator position was</p> <p>24 something I only actually held from, I believe, July --</p> <p>25 June through August. It was a position that they</p>

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<p style="text-align: right;">Page 14</p> <p>1 transferred -- transitioned me into.</p> <p>2 Q. What was your position before they transferred</p> <p>3 you into compliance coordinator?</p> <p>4 A. I was considered kind of a payroll manager.</p> <p>5 Q. So let's take a look here. You have some, I</p> <p>6 would say, bullet points, but they look like hashtag</p> <p>7 points. I don't think it matters. But here under Cobra</p> <p>8 Energy, can you see where you've listed your</p> <p>9 responsibilities at Cobra Energy, and can you verify</p> <p>10 they're accurate.</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And then looking back at your time --</p> <p>13 your jobs before Cobra Energy, my initial review -- and</p> <p>14 correct me if I'm wrong. It looks like Cobra Energy was</p> <p>15 your first position working in a position responsible</p> <p>16 for processing payroll.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And so this had a lot of new things for</p> <p>19 you?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Because you had never performed the jobs</p> <p>22 before that are listed here that you have here for</p> <p>23 Cobra Energy, right?</p> <p>24 A. Not all of them. Some of them were new. Some</p> <p>25 of them I had experience in previous employment.</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. LOMBARDINO: Objection.</p> <p>2 A. I know there is a reason that Cobra terminated</p> <p>3 me, but I don't remember what that reason was.</p> <p>4 Q. Who was it that terminated you?</p> <p>5 MR. LOMBARDINO: Objection, calls for</p> <p>6 speculation.</p> <p>7 A. Michelle -- her maiden name was Poling. I</p> <p>8 can't remember what her married last name was. She was</p> <p>9 my supervisor.</p> <p>10 Q. What company did she work for?</p> <p>11 A. Cobra Energy.</p> <p>12 Q. What was her position?</p> <p>13 A. She was the HR director for Cobra Energy.</p> <p>14 Q. Were you given any kind of documents when you</p> <p>15 were terminated, like a termination slip that had</p> <p>16 information on it about your termination?</p> <p>17 A. At the time of termination, I don't remember</p> <p>18 receiving one.</p> <p>19 Q. How were you informed you were terminated?</p> <p>20 A. She asked me to meet with her after work one</p> <p>21 day and effectively told me I was terminated.</p> <p>22 Q. And were you terminated right then and there?</p> <p>23 Were you allowed to come back the next day, or did you</p> <p>24 have a phase-out? What happened after that?</p> <p>25 A. It was effective immediately.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. Which one of these did you have prior</p> <p>2 experience with?</p> <p>3 A. Communicating with leadership teams, managing</p> <p>4 transportation, reviewing policies. Those are some of</p> <p>5 the highlights.</p> <p>6 Q. Okay. So you feel like that the job that you</p> <p>7 had before Cobra Energy prepared you well enough to be</p> <p>8 able to step into this role --</p> <p>9 A. Yes, sir.</p> <p>10 Q. -- with normal -- I mean, you did have to get</p> <p>11 trained, though, right?</p> <p>12 A. Yes, sir. Yeah. Upon initiation, I felt</p> <p>13 comfortable in that position, and then throughout the</p> <p>14 role, through training and other processes, I learned</p> <p>15 the skills that I needed.</p> <p>16 Q. Okay. Can you tell me why your employment</p> <p>17 with Cobra Energy ended.</p> <p>18 A. I don't remember the particulars that they</p> <p>19 used on the termination other than they terminated me.</p> <p>20 Q. Okay. So you were terminated --</p> <p>21 A. Yes, sir.</p> <p>22 Q. -- is that right? Okay.</p> <p>23 Were you terminated because of a reduction in</p> <p>24 force or were you terminated because of a specific</p> <p>25 reason?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Where were you when she terminated you?</p> <p>2 A. I don't remember the location. I just</p> <p>3 remember it being outside of the work location.</p> <p>4 Q. And what work location are you talking about?</p> <p>5 A. There was an office that was being set up in</p> <p>6 Arlington, Texas, and at the time, it was still being</p> <p>7 set up, and so we were working from home predominantly,</p> <p>8 and so she had me meet her in Arlington to go over the</p> <p>9 reasons why she terminated me.</p> <p>10 Q. Besides Ms. Poling communicating to you that</p> <p>11 you were terminated, was there anyone else in management</p> <p>12 that you're aware of that participated in that process?</p> <p>13 MR. LOMBARDINO: Objection, calls for</p> <p>14 speculation.</p> <p>15 A. The only other person that I am aware of was</p> <p>16 the president, Keith Ellison, and I know that because I</p> <p>17 appealed the termination to him.</p> <p>18 Q. I'm sorry. I didn't catch the last part. You</p> <p>19 did what?</p> <p>20 A. The only reason I know that he was involved</p> <p>21 was because I appealed my termination to him.</p> <p>22 Q. Oh, okay. How did you appeal your termination</p> <p>23 to Keith Ellison?</p> <p>24 A. I called him and told him that I didn't think</p> <p>25 it was fair and asked him to review the evidence.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. And what did he say?</p> <p>2 A. He came back and said that he agreed with her</p> <p>3 decision.</p> <p>4 Q. Okay. Now, with Mr. Ellison, when you told</p> <p>5 him you didn't think it was fair, what about your</p> <p>6 termination wasn't fair, if you can recall?</p> <p>7 A. I remember parts of the conversation, and I</p> <p>8 know it had to do with payroll, but beyond that, I don't</p> <p>9 remember.</p> <p>10 Q. Okay. Is there anything else about that</p> <p>11 conversation that you can remember now?</p> <p>12 A. Other than I was very upset, no, sir.</p> <p>13 Q. Do you bear any ill will towards Cobra or</p> <p>14 Mammoth, Higher Power, any of the defendants in this</p> <p>15 matter over your termination?</p> <p>16 A. No, sir.</p> <p>17 Q. So even though you were terminated, you feel</p> <p>18 confident that you can testify impartially and</p> <p>19 truthfully today?</p> <p>20 MR. LOMBARDINO: Objection, asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: I didn't hear you, Michael.</p> <p>23 MR. LOMBARDINO: I said, Objection, asked</p> <p>24 and answered. He was asking you the same question a</p> <p>25 different way. But if you remember the question, you</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Oh, yes, sir.</p> <p>2 Q. When you worked for Cobra Energy, I think you</p> <p>3 mentioned that your supervisor, your direct supervisor,</p> <p>4 was Michelle Poling, right?</p> <p>5 A. She was, yes, sir.</p> <p>6 Q. Was there anyone else that you would report to</p> <p>7 with Cobra Energy?</p> <p>8 A. Initially, my reporting manager was Jason, and</p> <p>9 I can't remember Jason's last name. He was the</p> <p>10 logistics director. So I reported to him, and then once</p> <p>11 Michelle was hired, I reported to her.</p> <p>12 Q. Okay. Was there anyone at Mammoth that you'd</p> <p>13 would report to?</p> <p>14 A. I didn't report to them, but I communicated</p> <p>15 with individuals such as Alex Kalman and Jeff Beagle.</p> <p>16 Q. Did you have any people that reported to you?</p> <p>17 A. No, sir.</p> <p>18 Q. Back to Exhibit 207 which I still have up on</p> <p>19 your screen. When you say you wrote and reviewed</p> <p>20 policies and procedures at Cobra Energy, what do you</p> <p>21 mean by that?</p> <p>22 A. Policies such as our transportation, the</p> <p>23 rotation policy for individuals as they were</p> <p>24 transitioning to the island and back home to continue</p> <p>25 working, or if they were just going on a rotation,</p>
<p style="text-align: right;">Page 19</p> <p>1 can answer it, and if you need to repeat the question,</p> <p>2 the court reporter can read it back to you.</p> <p>3 A. Can you repeat the question, David?</p> <p>4 Q. Yes, sir. I'm just trying to verify that even</p> <p>5 though you were terminated, that your testimony today,</p> <p>6 in your opinion, can be truthful and accurate.</p> <p>7 A. Yes, sir, it can be. Mammoth always treated</p> <p>8 me fairly.</p> <p>9 Q. And you understand that your obligation to</p> <p>10 speak under oath comes before any feelings you may have</p> <p>11 in regard to your termination, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. When you were working for Cobra Energy, which</p> <p>14 locations were you working out of?</p> <p>15 A. Predominantly out of the San Juan office in</p> <p>16 Puerto Rico.</p> <p>17 Q. When you say predominantly, why do you say</p> <p>18 predominantly and not always?</p> <p>19 A. Sometimes I worked from my house in Puerto</p> <p>20 Rico. At times I was in plain view working. Majority</p> <p>21 of the time spent was within the office in San Juan, but</p> <p>22 I did work from other locations at times.</p> <p>23 Q. Okay. But for that period you were with</p> <p>24 Cobra Energy, it was almost always in Puerto Rico,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 21</p> <p>1 things of that nature.</p> <p>2 Q. Did you have any duties associated with</p> <p>3 writing or reviewing Cobra's policies about how they</p> <p>4 would pay overtime pay?</p> <p>5 A. I did not.</p> <p>6 Q. Did you have any conversations with an</p> <p>7 attorney named Mr. Broussard about overtime pay?</p> <p>8 A. I don't recognize that name.</p> <p>9 Q. Were you part of any decision-making about how</p> <p>10 overtime pay would be calculated for the workers in</p> <p>11 Puerto Rico?</p> <p>12 A. No, sir.</p> <p>13 MR. STUKENBERG: Objection, asked and</p> <p>14 answered.</p> <p>15 Q. I didn't hear your response, sir.</p> <p>16 A. I did not have any responsibilities in that.</p> <p>17 Q. When you worked for Cobra Energy, were you</p> <p>18 able to attend any orientations for folks coming out to</p> <p>19 work at Puerto Rico, like with 5 Star or Higher Power?</p> <p>20 A. I attended some in Puerto Rico, yes, sir.</p> <p>21 Q. Okay. Which orientations did you attend?</p> <p>22 A. All of them that took place in Puerto Rico or</p> <p>23 the majority of them. I don't know that I was there for</p> <p>24 all of them.</p> <p>25 Q. So let's try and get what you remember. I</p>



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<p style="text-align: right;">Page 22</p> <p>1 mean, are we talking like one or two, are we talking  2 ten? Do you have a sense for about how many it was?  3 <b>A. I don't remember the specific number, but it  4 was quite a few.</b>  5 Q. Okay. Did you attend them for Higher Power  6 and 5 Star or just one or the other?  7 <b>A. We hired people into all three entities, and  8 so I handled -- I was part of orientation for all three.</b>  9 Q. Oh, these were orientations that had -- this  10 was orientations for multiple companies all at once?  11 <b>A. At times, yes, sir.</b>  12 Q. Okay. So you attended orientations that had  13 5 Star and Higher Power in the same orientation?  14 <b>A. I don't remember if -- I don't remember if we  15 actually did multiple entities in the same orientation  16 or not. I don't believe so, but I don't remember.</b>  17 Q. Do you recall any materials that would have  18 been shared with the linemen about their pay in these  19 orientations?  20 <b>A. We provided --</b>  21 MR. LOMBARDINO: Objection, vague and  22 ambiguous.  23 THE WITNESS: Do what?  24 MR. LOMBARDINO: I said, Objection, vague  25 and ambiguous. But you can answer the question if you</p>	<p style="text-align: right;">Page 24</p> <p>1 <b>A. Yes, sir.</b>  2 Q. What was that target?  3 <b>A. It varied from individual to individual.</b>  4 Q. Okay. Did it vary by position?  5 <b>A. Yes, sir.</b>  6 Q. Did you guys refer to that target as a day  7 rate?  8 <b>A. In the vernacular while we were down there,  9 yes, sir.</b>  10 Q. And you guys did that so the linemen would  11 know what they could expect to be paid when they worked  12 a full seven days per week, right?  13 <b>A. Yes, sir.</b>  14 Q. Did you speak with your father about how the  15 workers would be paid before you started working in  16 Puerto Rico.  17 <b>A. Only about my compensation.</b>  18 Q. After you started working in Puerto Rico, did  19 he ever talk to you about how the workers would be paid?  20 <b>A. We would discuss it, amongst other things.</b>  21 Q. Okay. And did he refer to their pay as a day  22 rate?  23 <b>A. The vernacular at that time, yes, sir.</b>  24 Q. Sir, we're going to look at some emails that  25 have been labeled as Plaintiff's Exhibit 208, and we'll</p>
<p style="text-align: right;">Page 23</p> <p>1 understand it.  2 MR. MOULTON: Hey, Mike, I guess before we  3 get -- before you answer that question. Mr. Lombardino,  4 I'd just like to remind you that in the Western District  5 of Texas, the objections are form, and that's pretty  6 much it.  7 MR. STUKENBERG: Dave, if you don't like  8 our objections, you can take them up with the court. I  9 don't need you reminding me of what the rules are.  10 MR. MOULTON: I was reminding  11 Mr. Lombardino, but yes. Okay.  12 Q. Sir, do you recall any materials about how the  13 linemen would be paid at these orientations?  14 MR. LOMBARDINO: Same objection.  15 <b>A. We would provide an offer letter to the  16 individuals with their expected compensation and  17 benefits and inherent work expectations.</b>  18 Q. On the offer letters that were given to the  19 workers in these orientations, how was the pay  20 expressed, according to your memory?  21 <b>A. The pay was an hourly rate calculated over  22 16 hours a day over the 14-day pay period.</b>  23 Q. With the hourly rate for 16 hours a day over a  24 14-day pay period, was there any sort of target that the  25 company was trying to reach with that pay?</p>	<p style="text-align: right;">Page 25</p> <p>1 start sort of down at the bottom and let you get  2 acquainted with this, and I'll have some questions about  3 it for you. If you can just let me know when you're  4 ready to scroll up.  5 <b>A. Yes, sir. Well, I'm not ready. I was just  6 letting you know that I'll let you know.</b>  7 Q. Okay.  8 <b>A. I'm ready. I'm ready. Can you scroll down  9 slightly. I'm ready. Okay.</b>  10 Q. Okay. So after having reviewed this email,  11 can you give me a better sense of when it was you  12 started working in Puerto Rico.  13 <b>A. Started working in Puerto Rico was October  14 31st.</b>  15 Q. Okay.  16 MR. LOMBARDINO: Of what year, just for  17 the record.  18 THE WITNESS: 2017.  19 Q. In this email here on October 24th from  20 Mr. Ken Kinsey, do you know why his signature says  21 Mammoth Energy on it?  22 MR. STUKENBERG: Objection, speculation.  23 <b>A. I don't know.</b>  24 Q. Do you know why his -- later on it says he's  25 vice president of operations at Cobra?</p>

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<p style="text-align: right;">Page 26</p> <p>1 MR. STUKENBERG: Same objection.</p> <p>2 A. That was his position, from what I was aware</p> <p>3 of.</p> <p>4 Q. You were never aware of him having a position</p> <p>5 in Mammoth Energy?</p> <p>6 A. No, sir.</p> <p>7 Q. You don't know why he would have a Mammoth</p> <p>8 Energy email?</p> <p>9 MR. LOMBARDINO: Objection, calls for</p> <p>10 speculation.</p> <p>11 A. I think it had to do that Cobra was still</p> <p>12 getting things established, but I can't say that for</p> <p>13 certain.</p> <p>14 Q. Okay. Cobra is an entity that Mammoth</p> <p>15 created, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did Mr. Ellison ever tell you that the workers</p> <p>18 in Puerto Rico would be paid a day rate?</p> <p>19 A. That was the vernacular that we were using.</p> <p>20 Q. Okay. Do you not think that he meant day rate</p> <p>21 when he said day rate?</p> <p>22 A. I don't know what he thought, honestly. I</p> <p>23 didn't have a lot of interaction with him.</p> <p>24 Q. Okay. Well, if someone tells you at that time</p> <p>25 that the workers are getting a day rate, what did you</p>	<p style="text-align: right;">Page 28</p> <p>1 with Mr. Ellison?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Were you around him enough to have an opinion</p> <p>4 about whether or not he's an honest person or not?</p> <p>5 A. Yes. And he is from my interactions with him.</p> <p>6 Q. Okay. So if he were to write something in an</p> <p>7 email like this, we can trust that what he's saying is</p> <p>8 true?</p> <p>9 MR. STUKENBERG: Objection --</p> <p>10 MR. LOMBARDINO: Objection, calls for</p> <p>11 speculation.</p> <p>12 Q. In your opinion.</p> <p>13 A. In my opinion, I believe that's the way he</p> <p>14 understood that to be taking place.</p> <p>15 Q. Okay. And you understood it the same way?</p> <p>16 A. At that time, yes, sir.</p> <p>17 Q. Exhibit 165 is an exhibit we've used</p> <p>18 previously, and it's another email chain. Go ahead and</p> <p>19 take a look at this.</p> <p>20 A. I'm ready to move forward. I'm ready. Okay.</p> <p>21 Q. So Exhibit 165 are emails exchanged, that</p> <p>22 include you, about how the workers in Puerto Rico would</p> <p>23 be paid, correct?</p> <p>24 MR. STUKENBERG: Objection.</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 27</p> <p>1 understand that to mean?</p> <p>2 MR. STUKENBERG: Objection, speculation.</p> <p>3 A. At the time I thought when they said day rate,</p> <p>4 it meant that they were going to receive a certain</p> <p>5 amount per day.</p> <p>6 Q. In Exhibit 209, I want you to review these</p> <p>7 emails for me, and I'll scroll up whenever you're ready.</p> <p>8 A. I'm ready to scroll up. I'm ready. Okay.</p> <p>9 I'm ready.</p> <p>10 Q. So in Exhibit 209, we have some emails about</p> <p>11 how the workers would be paid, and you were copied on</p> <p>12 it, right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And here on November 20th, 2017, we have the</p> <p>15 message from Keith Ellison about how the linemen are</p> <p>16 going to be paid, right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And he said, All GF's and below are to be</p> <p>19 purely the day rate while on island.</p> <p>20 Do you see that?</p> <p>21 A. I do, yes, sir.</p> <p>22 Q. So at this time you understood that to mean</p> <p>23 they'd be paid a flat amount per day, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Now, you said you hardly interacted personally</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. When you say -- in the start of this email</p> <p>2 chain when you say, All employees will receive a day</p> <p>3 rate only while in Puerto Rico on November 21st, you're</p> <p>4 using the same understanding as you had received from</p> <p>5 Mr. Ellison the day before, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And that understanding was that they would get</p> <p>8 their day rate for every day that they worked, correct?</p> <p>9 A. While in Puerto Rico, yes.</p> <p>10 Q. And if you also notice here, there's an</p> <p>11 attachment to this email called pay class Excel</p> <p>12 spreadsheet, right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. We're going to take a look at that</p> <p>15 spreadsheet. It's Exhibit 137 which we've used</p> <p>16 previously. Go ahead and take a look at this, if you</p> <p>17 would. Let me know when you're ready to talk about it.</p> <p>18 A. Yes, sir, I'm ready.</p> <p>19 Q. Okay. So on Plaintiff's Exhibit 137, we have</p> <p>20 the pay scale for the workers in Puerto Rico, right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And we even have your pay on here, I believe.</p> <p>23 Payroll/HR manager, J.D. Kinsey; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. And it has your base pay and your day rate.</p>



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<p style="text-align: right;">Page 30</p> <p>1 Are those amounts correct?</p> <p>2     <b>A. At the time of that email, yes, sir.</b></p> <p>3     <b>Q. Your pay may have changed over time is what</b>  4 you're saying?</p> <p>5     <b>A. Yes, sir.</b></p> <p>6     <b>Q. And it has your father's pay up here as well,</b>  7 right?</p> <p>8     <b>A. Yes, sir.</b></p> <p>9     <b>Q. Do you happen to know if that's correct?</b></p> <p>10    <b>A. At that time, it was.</b></p> <p>11    <b>Q. And the pay information here for general</b>  12 foreman on down is also correct?</p> <p>13           MR. STUKENBERG: Objection, form.</p> <p>14    <b>A. Yes, sir.</b></p> <p>15    <b>Q. Same goes for the mechanics and the safety</b>  16 guys?</p> <p>17           MR. STUKENBERG: Objection, form.</p> <p>18    <b>A. Yes, sir.</b></p> <p>19    <b>Q. So looking at Exhibit 137, you're not aware of</b>  20 any inaccuracies about the pay rates here?</p> <p>21           MR. STUKENBERG: Same objection.</p> <p>22           MR. LOMBARDINO: Objection, misleading.</p> <p>23    <b>A. At the time of that email, that was the way I</b>  24 understood it.</p> <p>25    <b>Q. When you attended orientations for 5 Star and</b></p>	<p style="text-align: right;">Page 32</p> <p>1 the day rates, right?</p> <p>2     <b>A. Yes, sir.</b></p> <p>3     <b>Q. And you -- I think you were aware of that</b>  4 happening. Let's look at some emails about that, if we  5 can.</p> <p>6           If you'll look at Exhibit 176 which we have  7 used previously. It's just one page. Why don't you  8 review this for me and then we'll talk about it.</p> <p>9           MR. STUKENBERG: It's not on the screen.</p> <p>10          MR. MOULTON: I'm sorry.</p> <p>11    <b>Q. Do you see Exhibit 176 now, sir?</b></p> <p>12    <b>A. Yes, sir. Okay.</b></p> <p>13    <b>Q. Okay. So in Exhibit 176, you're talking about</b>  14 how you had seen how the day rates had been broken down  15 into hourly rates, correct?</p> <p>16    <b>A. Yes, sir.</b></p> <p>17    <b>Q. And you had started to do some math to try to</b>  18 figure out how the hourly rates would match up to the  19 day rates, correct?</p> <p>20    <b>A. Yes, sir.</b></p> <p>21    <b>Q. And so you were letting -- you had a question</b>  22 for Mr. Beagle, because the way you were doing your math  23 when you did the hourly calculation, it was coming up  24 short of the day rate calculation, correct?</p> <p>25    <b>A. Per the email, yes, sir.</b></p>
<p style="text-align: right;">Page 31</p> <p>1 Higher Power, you would have seen their pay scales as  2 well, correct?</p> <p>3     <b>A. Only the linemen.</b></p> <p>4     <b>Q. Okay. In Exhibit 138, one we've used</b>  5 previously, we have an orientation letter for the 5 Star  6 guys. Do you see this?</p> <p>7     <b>A. Yes, sir.</b></p> <p>8           MR. STUKENBERG: Objection, form;  9 misleading. That's not what it is.</p> <p>10    <b>Q. Do you understand this to be a letter to</b>  11 attend orientation for the 5 Star guys?</p> <p>12    <b>A. Yes, sir.</b></p> <p>13    <b>Q. And you can see that it's scheduled for April</b>  14 5th, 2018?</p> <p>15    <b>A. Yes, sir.</b></p> <p>16    <b>Q. And you also notice here that they have a pay</b>  17 scale which matches the pay scale we've already seen in  18 the previous exhibit, correct?</p> <p>19    <b>A. Yes, sir.</b></p> <p>20    <b>Q. We see this same pay scale in Exhibit 139,</b>  21 which I'm showing you, from Higher Power. Can you  22 verify to me that this is the same pay scale?</p> <p>23    <b>A. Yes, sir.</b></p> <p>24    <b>Q. Now, at some point the decision was made to</b>  25 put hourly rates into the system that would come out to</p>	<p style="text-align: right;">Page 33</p> <p>1     <b>Q. Right. And is that your memory?</b></p> <p>2     <b>A. That's from what I remember, yes, sir.</b></p> <p>3     <b>Q. Okay. So Mr. Beagle then kind of gave you</b>  4 some instruction. It looks like you were using the  5 wrong hours. You were looking at everything over eight  6 in a day being overtime, right?</p> <p>7     <b>A. I'm not sure what math I was using. I'd just</b>  8 say I was doing eight hours of regular time plus eight  9 hours of overtime, which is the same thing as what he  10 expressed.</p> <p>11    <b>Q. Okay. So he -- but he gave you -- at the top</b>  12 of this email, he's telling you the correct formula to  13 use to analyze how these rates match up, right?</p> <p>14    <b>A. Yes, sir.</b></p> <p>15    <b>Q. And so basically he's saying that if you take</b>  16 the hourly rates and the overtime with -- counting  17 everything over 40 as overtime for seven days of  18 16 hours, the worker will get the equivalent of their  19 day rate, correct?</p> <p>20    <b>A. Yes, that was the expected compensation for</b>  21 the day.</p> <p>22    <b>Q. All right. I'm going to show you Exhibit 210.</b>  23 We're going to kind of walk through one of these  24 calculations and see if it rings a bell for you.</p> <p>25           You've seen a calculation like this as</p>

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<p style="text-align: right;">Page 34</p> <p>1 probably what you were doing that night, where you have  2 a person who's paid \$600 per day to come out to what  3 their rate would be, correct?  4 MR. STUKENBERG: Dave, has this been  5 produced?  6 MR. MOULTON: Oh, you know -- actually,  7 no. It's just like a demonstrative we're walking  8 through. Like instead of me typing it all out on the  9 screen, this is what we're going to do.  10 MR. STUKENBERG: So is this something that  11 you just mocked up yourself?  12 MR. MOULTON: Yes.  13 MR. STUKENBERG: Okay. I'm going to go  14 ahead and object to any questions about a document  15 created by a lawyer that's not actually reflective of  16 the pay practice.  17 Q. So, Mr. Kinsey, I want to kind of go through  18 with you on this and see if this is what you remember as  19 the math being for how to come up with the difference --  20 to come up with the hourly rates and then the daily pay,  21 like the math that you were talking about with  22 Mr. Beagle. Okay?  23 A. That doesn't look like the math that I  24 remember. I don't understand the 108 and 148 hours.  25 Q. Okay. Well, let's go through it and see if it</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. So if we take that weekly pay that they can  2 expect if they work the whole week, divided by 148, we  3 come out with the hourly rate for a person at \$600 per  4 day, right?  5 A. Okay.  6 MR. STUKENBERG: Objection, form.  7 Q. Does that make sense to you?  8 A. Yes.  9 Q. Now, if we go back and we run this through  10 again, if you get paid \$28.38 with the total time for  11 the week, this is what you're actually going to see on a  12 paycheck when you work seven days, \$4,200 --  13 MR. STUKENBERG: Objection. We've never  14 seen a pay stub with 148 hours in a week. And if you  15 just want to ask him to confirm that the math reflected  16 on this sheet is accurate, then we're just wasting time  17 here. There's no pay stub that says it's 148 hours.  18 MR. MOULTON: Objection duly noted.  19 Q. Mr. Kinsey, you understand this math, correct?  20 Is there anything about this that's confusing you?  21 A. Other than it's not what I was doing at the  22 time nor is it what's on the pay stubs, yes.  23 Q. Sure. We'll get into that. But this is --  24 you reviewed spreadsheets prepared by Mr. Beagle that  25 did this math.</p>
<p style="text-align: right;">Page 35</p> <p>1 will make sense to you, see if you can agree with it.  2 Okay?  3 A. Okay.  4 Q. So on the island, the guys are being  5 considered to have worked 16 hours a day for seven days  6 in a week, which comes out to 112 hours. Is that your  7 understanding?  8 A. Yes, sir.  9 Q. So when you do 112 per week, you have 40  10 regular and 72 overtime hours. Does that make sense?  11 A. Yes, sir.  12 Q. For 72 hours, if you're going to pay those at  13 time and a half, that's the same thing as 108 hours,  14 right?  15 A. That makes sense.  16 Q. Okay. So if you take the 108 of the overtime,  17 plus the 40, you come out to -- it's equivalent of 148  18 hours, right?  19 A. Okay.  20 Q. Then if you take what they would earn for the  21 week at a day rate, which is 600 times seven, you get  22 \$4,200, right?  23 A. Yes, sir.  24 MR. LOMBARDINO: Objection, assumes facts  25 not in evidence.</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Not that way, but the end result, yes.  2 Q. Okay. But the end result is that for folks  3 that were making \$600 per day on the pay stubs, it's  4 going to be \$28.38 per hour, right?  5 MR. STUKENBERG: Objection, form, the \$600  6 per day.  7 MR. LOMBARDINO: Objection, calls for  8 speculation.  9 A. That was my understanding at the time.  10 Q. And when the math is done on the paychecks at  11 \$28.38 per hour when they work an entire week, are they  12 going to get exactly \$4,200 or are they going to get  13 \$4,200.24?  14 MR. LOMBARDINO: Objection, calls for  15 speculation. It's a hypothetical, as it's not -- it's a  16 document prepared by counsel. But if you understand the  17 question, you can answer it.  18 A. Other than I don't like the way that you did  19 the math, that would have been an approximate amount  20 they would have gotten paid. I don't know that it would  21 have been that same amount based on the way the math is  22 doing.  23 MR. STUKENBERG: And I'll just go ahead  24 and object. This reflects no overtime or no overtime  25 rate.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. Sir, I'm going to show you a spreadsheet</p> <p>2 that's been produced in this case as Exhibit 167 that</p> <p>3 was prepared by Mr. Beagle.</p> <p>4 MR. STUKENBERG: Objection. How do you</p> <p>5 know it was prepared by Mr. Beagle?</p> <p>6 MR. MOULTON: Because he testified to it,</p> <p>7 Will.</p> <p>8 MR. STUKENBERG: I don't remember that.</p> <p>9 Q. Mr. Kinsey, I want you to take a look at this</p> <p>10 spreadsheet, which is --</p> <p>11 MR. MOULTON: For the court reporter, this</p> <p>12 is Mammoth 3292. It's an Excel spreadsheet. It doesn't</p> <p>13 have a sticker on it, but it is Exhibit 167.</p> <p>14 Q. Mr. Kinsey, looking at this spreadsheet, take</p> <p>15 a minute to look at it and let me know what you think --</p> <p>16 or let me know when you're ready.</p> <p>17 A. Okay.</p> <p>18 Q. Have you seen this spreadsheet before?</p> <p>19 A. I have not.</p> <p>20 Q. I'm going to look at Exhibit 151 which we used</p> <p>21 previously. Go ahead and take a look at this and let me</p> <p>22 know when you're ready.</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Is this the pay scale that was</p> <p>25 developed for Cobra Energy?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Right. So, for example, if you were looking</p> <p>2 at a pay stub back then that had \$37.84, you already</p> <p>3 know this guy is an \$800 target guy?</p> <p>4 MR. LOMBARDINO: Objection, calls for</p> <p>5 speculation.</p> <p>6 A. Yes, sir.</p> <p>7 Q. I didn't hear your answer, sir.</p> <p>8 A. Yes, sir. I would have known simply because I</p> <p>9 would review pay stubs to make sure individuals were</p> <p>10 paid correctly and the pay stubs that I could see showed</p> <p>11 their classification and their hourly rate.</p> <p>12 Q. Okay.</p> <p>13 MR. STUKENBERG: Hey, Dave, just whenever</p> <p>14 you get to a point to take a quick break. No rush. I</p> <p>15 was just going to grab some coffee. If you have more</p> <p>16 questions, go ahead. Just put it on your radar.</p> <p>17 MR. MOULTON: I think we can finish up</p> <p>18 with this document here in a minute. I just have a</p> <p>19 couple more questions.</p> <p>20 MR. STUKENBERG: Sure.</p> <p>21 Q. So, Mr. Kinsey, did you notice when you worked</p> <p>22 in Puerto Rico, that because these rates were -- would</p> <p>23 only get the worker to the full amount of day rate pay</p> <p>24 for a full week, that when they worked less than a full</p> <p>25 week, they weren't going to get the same amount as their</p>
<p style="text-align: right;">Page 39</p> <p>1 A. For the linemen, yes, sir.</p> <p>2 Q. This is the pay scale that would have applied</p> <p>3 to folks at Higher Power and 5 Star that were linemen?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And mechanics, too, right?</p> <p>6 A. Yes, sir. If you were working for Higher</p> <p>7 Power and 5 Star, they were equal pay structures.</p> <p>8 Q. If you notice here at that \$600 rate we were</p> <p>9 just looking at, you come out to be the rate we were</p> <p>10 just calculating. Do you understand that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Looking at these rates, do you recognize these</p> <p>13 rates?</p> <p>14 A. I do, yes, sir.</p> <p>15 Q. You're very familiar with them, right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. In fact, you probably know them so well, that</p> <p>18 you know that \$37.84 is associated with \$800 per day,</p> <p>19 right?</p> <p>20 MR. LOMBARDINO: Objection, calls for</p> <p>21 speculation.</p> <p>22 A. It has been several years, so I wouldn't have</p> <p>23 remembered that off the cuff, but at the time that I was</p> <p>24 working there, yes, I could have looked at a</p> <p>25 classification or a pay scale and known both.</p>	<p style="text-align: right;">Page 41</p> <p>1 day rate? Does that make sense?</p> <p>2 A. Yes, sir. If an employee did not work the</p> <p>3 full seven days, then the target compensation was not</p> <p>4 met.</p> <p>5 Q. Right. And so if we -- I want to share a</p> <p>6 calculator with you so we can kind of see an example.</p> <p>7 Okay? So you can see my calculator on the screen,</p> <p>8 right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. So let's take, for example, this thousand</p> <p>11 dollar rate which is associated with a \$47.30 hourly</p> <p>12 rate. Do you see that on the chart?</p> <p>13 A. It's not on the screen, but I know what you're</p> <p>14 referencing.</p> <p>15 Q. Bear with me, because I can't show both at the</p> <p>16 same time.</p> <p>17 So we do \$47.30 which is the rate for a</p> <p>18 thousand. We multiply that by 16, like if they only</p> <p>19 worked one day in a pay period, and that amount, as you</p> <p>20 can see on my screen, comes out to \$756.80, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So if the worker was expecting a day rate, he</p> <p>23 would be shorted, if he was only paid by the hour, by</p> <p>24 \$243.20, correct?</p> <p>25 A. Yes, sir.</p>

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<p style="text-align: right;">Page 42</p> <p>1 MR. STUKENBERG: Objection, form.</p> <p>2 Q. With this pay plan, these sort of concerns or</p> <p>3 complaints came up from the linemen, right?</p> <p>4 A. Yes.</p> <p>5 Q. Where they would complain that they weren't</p> <p>6 getting their full day rate?</p> <p>7 A. Yes, sir.</p> <p>8 MR. MOULTON: All right, Will. You can go</p> <p>9 ahead and -- we can take a quick coffee break if you'd</p> <p>10 like.</p> <p>11 MR. STUKENBERG: Thanks everyone.</p> <p>12 VIDEOGRAPHER: Off the record at 10:42.</p> <p>13 (Recess taken 10:42-11:01.)</p> <p>14 VIDEOGRAPHER: Back on the record at</p> <p>15 11:01.</p> <p>16 Q. (BY MR. MOULTON) All right, Mr. Kinsey. You</p> <p>17 understand we're back on the record and that you're</p> <p>18 under oath, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So one of the things I forgot to ask you about</p> <p>21 earlier was if your father, Mr. Ken Kinsey, does he</p> <p>22 still work with Mammoth or Cobra or any other affiliated</p> <p>23 companies?</p> <p>24 A. He does not.</p> <p>25 Q. How long ago did he stop working for Cobra?</p>	<p style="text-align: right;">Page 44</p> <p>1 were sometimes complaints when folks would object and</p> <p>2 they didn't have the full day rate on their check,</p> <p>3 correct?</p> <p>4 MR. STUKENBERG: Objection, form.</p> <p>5 A. I would receive phone calls from employees who</p> <p>6 had not received their expected compensation.</p> <p>7 Q. Right. And what they were expecting was to</p> <p>8 get the day rate amount that they had been promised,</p> <p>9 correct?</p> <p>10 MR. STUKENBERG: Objection, form.</p> <p>11 A. They were expected to get their expected</p> <p>12 compensation. I mean, we -- when I did orientations, I</p> <p>13 informed the individuals that there was an expected</p> <p>14 daily compensation, but it was going to be paid over an</p> <p>15 hourly overtime rate, and so if there was issues, then</p> <p>16 they needed to let me know and I would adjust as</p> <p>17 necessary.</p> <p>18 Q. Okay. An example of that would be the example</p> <p>19 we worked through on a calculator where if someone is at</p> <p>20 \$47.30 per hour under an hourly system, for, like, one</p> <p>21 day's pay, they ended up getting shorted, like, \$243.20.</p> <p>22 Do you remember that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. All right. So you would receive complaints</p> <p>25 from guys that'd be like, oh, hey, I need to get grossed</p>
<p style="text-align: right;">Page 43</p> <p>1 A. In the fall of -- or winter of 2018. It was</p> <p>2 shortly after my termination.</p> <p>3 Q. Okay. And do you know the circumstances of</p> <p>4 the -- how his employment ended?</p> <p>5 A. I just know he was terminated. I don't know</p> <p>6 the cause.</p> <p>7 Q. Do you know who it was that terminated him?</p> <p>8 A. It would have been Keith Ellison, because he</p> <p>9 was the only one that had the authority.</p> <p>10 Q. And what does your father do now?</p> <p>11 A. He works for an engineering consulting company</p> <p>12 out of Tyler, Texas.</p> <p>13 Q. Okay. Can we get his phone number?</p> <p>14 A. Yeah. I mean, I can tell it to you.</p> <p>15 Q. Go ahead.</p> <p>16 A. It is area code (432) 254-5783.</p> <p>17 Q. Thank you.</p> <p>18 All right. Before the break we were talking</p> <p>19 about the -- what would happen when folks who were paid</p> <p>20 at Cobra worked less than a full week and how, with the</p> <p>21 hourly pay in the system, it would be less than what</p> <p>22 their day rate pay would be. Do you recall that?</p> <p>23 MR. STUKENBERG: Objection, form.</p> <p>24 A. That was the conversation we were having.</p> <p>25 Q. And you would say that you recall that there</p>	<p style="text-align: right;">Page 45</p> <p>1 up to my day rate, right?</p> <p>2 MR. STUKENBERG: Objection, form.</p> <p>3 A. They would call and go, hey, my paycheck's not</p> <p>4 as much as what it's supposed to be, and then I would</p> <p>5 explain to them why, and I would make the adjustments to</p> <p>6 get them to that expected compensation.</p> <p>7 Q. So the amount that they were expecting was the</p> <p>8 amount of the day rate pay that we saw on the prior</p> <p>9 exhibits, right?</p> <p>10 MR. STUKENBERG: Objection, form.</p> <p>11 A. That was the total amount of expected</p> <p>12 compensation, yes.</p> <p>13 Q. Right. So they were complaining because</p> <p>14 they weren't -- there was something wrong with their</p> <p>15 paycheck, they didn't get that, right?</p> <p>16 A. That they didn't get the expected</p> <p>17 compensation, yes, sir.</p> <p>18 Q. Right. And so you would walk through it and</p> <p>19 check it out for them, right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. So you would look at their hourly rate --</p> <p>22 VIDEOGRAPHER: Excuse me. I'm the</p> <p>23 videographer, and I'm getting a lot of background noise</p> <p>24 to the point that I can barely understand your</p> <p>25 questions.</p>

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<p style="text-align: right;">Page 46</p> <p>1 THE REPORTER: Yeah, I'm having trouble 2 hearing the questions. 3 VIDEOGRAPHER: I don't know where it's 4 coming from. 5 MR. MOULTON: I hear all these voices in 6 the background. 7 VIDEOGRAPHER: Yes. 8 MR. MOULTON: I think it might be Will's 9 house. 10 MR. STUKENBERG: Let me see. 11 MR. MOULTON: Is that better? 12 VIDEOGRAPHER: It is at the moment, yes. 13 Thank you. My apologies. 14 MR. MOULTON: No problem. 15 A. Can you repeat the question, Dave? 16 Q. Yeah. I don't recall exactly what the 17 question was, but let's see if we can just get back on 18 track with it. 19 I'm just trying to understand how you 20 understood the complaints to be, right, and then we'll 21 walk through how you addressed them. So what I 22 understand is, when folks didn't work a full week, their 23 hourly pay would be short of what they were expecting 24 for their day rate pay, and they would contact you about 25 it, right?</p>	<p style="text-align: right;">Page 48</p> <p>1 amount the day rate would be, right? 2 MR. STUKENBERG: Objection, form. 3 A. Yes. I mean, that was their -- that was what 4 the gross-up was, to adjust the compensation to make 5 sure that they received what they were expecting. 6 Q. All right. We're going to look at Exhibit 7 211. We have some emails here. It's just one page. 8 Why don't you take a look at this for me and we'll talk 9 about it. 10 A. I do want to say this, David. Whenever we 11 first got to -- 12 Q. Hold on. Hold on. Technically, the witness 13 is supposed to -- I'm supposed to ask a question and you 14 answer. 15 A. Okay. 16 Q. Are you answering the question I just asked, 17 though? Before you say what you're going to say, what 18 are you doing? 19 A. I want to provide some context, because 20 this was sent in early November -- 21 Q. Hold on. Before you do this, are you giving 22 context to the emails I'm about to ask you about? 23 A. Based on what I just read, yes, sir. 24 Q. Let's go through the email first, and then in 25 your responses, as we talk about this, go ahead -- you</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Yes. If there was an issue with their 2 paychecks, then I was the point of contact, and they 3 would reach out to me and then we would go from there. 4 Q. Right. And so you would look at their pay. 5 You would look at, for example, their rate to make sure 6 it was right, right? 7 A. Yes, sir. 8 Q. And you'd also look at the number of hours 9 that were inputted to make sure that that was right, 10 right? 11 A. Correct. 12 Q. And if there was a shortage to the day rate, 13 you would look to see if there was a gross-up that was 14 paid, correct? 15 MR. STUKENBERG: Objection, form. 16 A. If there was -- if an individual did not work 17 the full seven days, then yes, I would have to do an 18 adjustment to meet their expected compensation. 19 Q. Okay. In the emails and conversations with 20 folks at Cobra and Mammoth, you would refer to that 21 process as a gross-up, correct? 22 A. Yes, sir. 23 Q. So when we talk about gross-up, we're talking 24 about paying that difference between how the pay came 25 out under the hourly system -- that pay versus the</p>	<p style="text-align: right;">Page 49</p> <p>1 can talk about that if it's responsive to my question. 2 Does that make sense? 3 A. Yes, sir. 4 Q. I mean, it's just depositions are sort of 5 formal like that. Okay? 6 A. Understood. 7 MR. LOMBARDINO: He can provide whatever 8 context he wants. 9 MR. MOULTON: Sure he can in response to a 10 question. That's the way court works. It's question 11 and answer. 12 Q. All right. Mr. Kinsey, in Exhibit 211, we 13 have some emails between you and Mr. Kinsey -- Ken 14 Kinsey about -- some complaints about guys not getting 15 their expected compensation, correct? 16 A. Well, it was a communication between me and 17 the superintendents since he was the VP of operations. 18 I just carbon copied him on the email. 19 Q. Oh, I see. Okay. So you're talking to the 20 superintendents, letting them know that there's -- 21 you're already having issues. This is early in the 22 process, right? 23 A. Yes, sir. And that's why I want to quantify, 24 because early in the process, it was a mess because 25 there was a lot of paper -- what was communicated in one</p>

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<p style="text-align: right;">Page 50</p> <p>1 location was not the same in another, and so trying to  2 get all three entities on the same page took a few  3 weeks, and so that's where a lot of the pay issues  4 originated from, as well as, as employees were  5 transitioned from stateside work to Puerto Rico work,  6 pay rates did not get adjusted correctly, and that  7 created a lot of challenges as well.</p> <p>8 Q. So some of these complaints would have been  9 for folks calling about the adjustment, because maybe  10 they had transferred on the island midweek and they  11 didn't have the correct amount of gross-up or not of  12 gross-up on their check, correct?</p> <p>13 MR. STUKENBERG: Objection, speculation.  14 The email does not reflect that that was the pay concern  15 at all anywhere.</p> <p>16 A. At this particular point, based on the date, a  17 lot of these issues had to deal with the rates  18 inherently not being accurate and issues with standby as  19 they transitioned to the island. The early weeks of the  20 power restoration, we transported hundreds of employees  21 to the island, and so there was a lot of just standby  22 time.</p> <p>23 I mean, a lot of time guys waited to be able  24 to fly, because trying to get flights for hundreds of  25 people is not always easy. So at the time of this</p>	<p style="text-align: right;">Page 52</p> <p>1 A. I don't know.</p> <p>2 Q. As part of your job in payroll, it was your  3 job to process these gross-ups, correct?</p> <p>4 A. To make the adjustments, yes, sir. I didn't  5 actually process the payroll. That took place by  6 Mammoth.</p> <p>7 Q. Okay. So when you make the adjustments,  8 specifically the gross-ups, how did you do it?</p> <p>9 A. I would look at what their hourly compensation  10 equated to compared to what the expected compensation  11 was, and then I would add that variance to the  12 timesheets, so that whenever payroll was processed, the  13 end result was what they were expecting to get paid.</p> <p>14 Q. So you would add the difference into Paycom?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Would you calculate the difference yourself,  17 or was there like a chart you could look up and put the  18 number in?</p> <p>19 A. It was something that I had to calculate  20 manually.</p> <p>21 Q. So the process you would do that, was that  22 similar like what we did before with the thousand dollar  23 and \$47.30 rate that we did on the calculator? Was it  24 like that?</p> <p>25 MR. LOMBARDINO: Objection, vague and</p>
<p style="text-align: right;">Page 51</p> <p>1 email, that was the situation we were experiencing.</p> <p>2 Q. But you'd agree with me that as folks came  3 onto the island, if they came on at any point midweek  4 and they didn't have a full seven days, that their  5 hourly pay was going to need a gross-up to get them to  6 that day rate pay, right?</p> <p>7 MR. STUKENBERG: Objection, form; asked  8 and answered.</p> <p>9 A. Because of the inherent payroll issues  10 associated with the chaos, I mean, everyone -- for the  11 most part, a lot of employees had to get some type of  12 adjustment.</p> <p>13 Q. Okay. And some of those adjustments would  14 have included the gross-up that we've been discussing,  15 correct?</p> <p>16 MR. STUKENBERG: Objection --  17 (Crosstalk/audio distortion.)</p> <p>18 A. That's possible.</p> <p>19 Q. So it was part of your job to track down these  20 issues and to address them, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Do you recall whose idea it was to pay these  23 gross-ups on top of the hourly pay?</p> <p>24 MR. LOMBARDINO: Objection, calls for  25 speculation.</p>	<p style="text-align: right;">Page 53</p> <p>1 ambiguous, lacks foundation.</p> <p>2 A. It was a similar process.</p> <p>3 Q. Okay. Can you describe to me how you would do  4 it?</p> <p>5 A. How specific do you want me to get? Because I  6 don't remember super specifics.</p> <p>7 Q. Tell me what you do remember as specifically  8 as possible.</p> <p>9 A. I just remember as I entered time, I would  10 look at the total hours inputted, and then I would look  11 at what Paycom preloaded as the expected compensation.  12 And then I had created a spreadsheet that kind of helped  13 me track a lot of different information, and so through  14 Excel, I would figure out what that variance was and  15 then I would add that into Paycom.</p> <p>16 Q. Okay. So when you're entering the hours --  17 and to be clear, the way you would do it is, for linemen  18 on the island, for every day that they're working, you  19 would input 16 hours into the Paycom system for that  20 day, right?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. So when you would load that into  23 Paycom, you're saying that Paycom would tell you what  24 the hourly pay would be based on those hours you'd  25 enter?</p>



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<p style="text-align: right;">Page 54</p> <p>1 A. Yes, sir.</p> <p>2 Q. And based on the spreadsheet you kept of what</p> <p>3 the -- let me ask you this: Did Paycom also tell you</p> <p>4 what the expected pay would be?</p> <p>5 A. No, sir.</p> <p>6 Q. Okay. You had a spreadsheet that would tell</p> <p>7 you what the expected pay would be?</p> <p>8 A. Yes, sir. It was in reference to one of the</p> <p>9 previous documents where there was the hourly rate of</p> <p>10 what the individual received and then what that rate</p> <p>11 should have equated to for total compensation. And then</p> <p>12 based on that, if I would know that individual only</p> <p>13 worked the one day per the previous example, then I</p> <p>14 would know, okay, that person should have been paid</p> <p>15 roughly equal to this, and then I would add that</p> <p>16 variance into Paycom. So for that particular day or</p> <p>17 that particular week, the end result would be what they</p> <p>18 were expecting, or at least that was the goal.</p> <p>19 Q. Okay. So it sounds like to me that maybe what</p> <p>20 you're talking about as far as referring back like on a</p> <p>21 chart would have been something like Exhibit 151 where</p> <p>22 you could see the day rate or expected pay and the</p> <p>23 hourly rates by each other?</p> <p>24 A. Yes, sir. So, for example, the \$47.30 that</p> <p>25 you mentioned earlier, I would look at -- I would know,</p>	<p style="text-align: right;">Page 56</p> <p>1 that person was.</p> <p>2 Q. Okay. So there's two things there. There's</p> <p>3 one -- based on your answer, we could be talking about</p> <p>4 two different things. My question is not about who</p> <p>5 would review your work to make sure you were right.</p> <p>6 We'll talk about that later.</p> <p>7 What I was wondering is this process, this</p> <p>8 gross-up process. Do you remember how it was that it</p> <p>9 started that you would do it this way?</p> <p>10 MR. LOMBARDINO: Objection, asked and</p> <p>11 answered.</p> <p>12 A. I don't remember what the process was. I just</p> <p>13 remember that when we started on the island, there was</p> <p>14 the terminology day rate, but I know very quickly</p> <p>15 Mammoth, Cobra came down and said that, hey, we can't</p> <p>16 issue a day rate because of reasons that I wasn't privy</p> <p>17 to, and we needed to be paying employees an hourly rate</p> <p>18 so that we could pay them overtime.</p> <p>19 And at that time, kind of per that one email</p> <p>20 with Jeff Beagle trying to understand how the math</p> <p>21 worked to make sure that I could express that to the</p> <p>22 employees, then I would do a -- I would create a</p> <p>23 spreadsheet of what the expected -- or what the actual</p> <p>24 pay was, what the expected pay was, and then what the</p> <p>25 adjustment needed to be.</p>
<p style="text-align: right;">Page 55</p> <p>1 hey, that \$47.30 and then however many hours they</p> <p>2 worked, if it was 16 or 32, et cetera. Knowing that the</p> <p>3 expected compensation would have been close to that</p> <p>4 thousand per day, then I would input an adjustment equal</p> <p>5 to that.</p> <p>6 Q. Right. So you would -- it was just like the</p> <p>7 example we did, right? You can take \$47.30 times 16 and</p> <p>8 see what that is, subtract it from a thousand, and that</p> <p>9 would be your gross-up?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Same thing. I mean, 32, whatever, you would</p> <p>12 just do that calculation difference and then you would</p> <p>13 enter that gross-up into Paycom?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Now, that process, that gross-up</p> <p>16 process, if you're -- under that calculation that you're</p> <p>17 doing, was that your idea to start doing that on your</p> <p>18 own, or was that something that you were instructed to</p> <p>19 do?</p> <p>20 MR. LOMBARDINO: Vague and ambiguous.</p> <p>21 A. At the time all that was taking place, I</p> <p>22 wasn't making any decisions on my own without</p> <p>23 collaborating with somebody, just because I knew how</p> <p>24 serious pay was. Now, who informed me or verified that</p> <p>25 what I was doing was accurate, I couldn't tell you who</p>	<p style="text-align: right;">Page 57</p> <p>1 And in the beginning, I would send that</p> <p>2 information to Mammoth payroll, HR, and they would</p> <p>3 actually input that into Paycom. Then it got to the</p> <p>4 point where we had so many people on the island, that</p> <p>5 the individuals within Oklahoma City, where Mammoth was</p> <p>6 located, couldn't maintain their normal responsibilities</p> <p>7 plus these, and then -- so at that point I was</p> <p>8 instructed to make the adjustments in Puerto Rico.</p> <p>9 Q. Okay. Let's kind of backpedal. There's a lot</p> <p>10 there I want to ask you about.</p> <p>11 When you're entering the 16 hours each day for</p> <p>12 the linemen, how do you know which days to enter 16 for</p> <p>13 and which ones you weren't?</p> <p>14 A. That was communicated to me via the -- I don't</p> <p>15 remember what we even called them at that point. The</p> <p>16 general foremen were responsible for communicating who</p> <p>17 was active working under them, and that information</p> <p>18 would get sent into the Puerto Rican main office in the</p> <p>19 form of a roster, and then based on that roster, I</p> <p>20 would -- based on that roster is how I entered my time.</p> <p>21 While entering the time if I noticed a</p> <p>22 variance, if somebody wasn't present or all of a sudden</p> <p>23 they showed up present, then I would communicate with</p> <p>24 the general foremen to quality control that roster.</p> <p>25 That was how it was communicated to me.</p>

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<p style="text-align: right;">Page 58</p> <p>1 Q. Who would compile the roster, or was that you?</p> <p>2 A. There was a lot of people involved.</p> <p>3 Q. Okay. So you have these general foremen</p> <p>4 generally reporting -- and I understand there wasn't</p> <p>5 electricity at times or good cell phone service, so you</p> <p>6 probably had general foremen communicating the</p> <p>7 attendance by telephone or verbally?</p> <p>8 A. A lot of different mediums. I mean, some had</p> <p>9 to be hand-delivered because of reasons you just</p> <p>10 expressed. Some we could -- they could get to a</p> <p>11 restored area, for lack of a better description, that</p> <p>12 had internet, and they would email them. Those were the</p> <p>13 two main forms that it was communicated.</p> <p>14 Q. So who in the Puerto Rico office was primarily</p> <p>15 responsible for gathering all that information into what</p> <p>16 I gather is one document called a roster?</p> <p>17 A. There was a company that Cobra subcontracted</p> <p>18 called Texserve, and Texserve was kind of a liaison.</p> <p>19 They would compile and gather a lot of information,</p> <p>20 including attendance, and then they would take that</p> <p>21 attendance and then they would submit that to -- we had</p> <p>22 a couple different people in the office that that</p> <p>23 information would go to. Once they did their quality</p> <p>24 check on it, then it was presented to me to do my</p> <p>25 quality check.</p>	<p style="text-align: right;">Page 60</p> <p>1 island?</p> <p>2 A. Yes, sir, because we -- again, hundreds of</p> <p>3 employees, and sometimes one individual -- hey, they're</p> <p>4 present, and they weren't. Well, we weren't going to</p> <p>5 pay them if they weren't present or vice versa.</p> <p>6 Hundreds of employees, that guy didn't check in that</p> <p>7 morning, he was not present. Well, I can't pay you if</p> <p>8 you're not present. And I would do what I could to make</p> <p>9 sure that people were paid correctly.</p> <p>10 Q. Okay. So you get the roster, and then are you</p> <p>11 able to just upload that roster into Paycom and Paycom</p> <p>12 puts 16's for everybody that's working that day, or do</p> <p>13 you have to manually enter that in?</p> <p>14 A. In the beginning, I had to manually enter it.</p> <p>15 Towards the end, we could use a format that we could</p> <p>16 import into Paycom to automatically do it.</p> <p>17 Q. For the gross-ups, would you manually enter in</p> <p>18 the gross-ups?</p> <p>19 A. Yes, I would have to manually enter those.</p> <p>20 Q. So Paycom didn't automatically calculate the</p> <p>21 gross-up for you?</p> <p>22 A. No, sir.</p> <p>23 Q. Before you could enter in a gross-up, did you</p> <p>24 have to get permission from anyone?</p> <p>25 A. In the beginning, yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. So the quality checks were to make sure</p> <p>2 that the -- that no one was missed or that the</p> <p>3 attendance basically was accurate, correct?</p> <p>4 A. That was part of it.</p> <p>5 Q. What else were they looking for?</p> <p>6 A. The rosters were also used for billing</p> <p>7 purposes. And I never saw the full document that</p> <p>8 Texserve presented to our office -- the main office. I</p> <p>9 just know there was a lot of information, and the</p> <p>10 attendance was just a part of that.</p> <p>11 Q. Okay. But safe to say -- and the only part I</p> <p>12 really -- I just want to know about the parts you know</p> <p>13 about. So it sounds like the only parts you really know</p> <p>14 about are the attendance part of this roster, right?</p> <p>15 A. Correct.</p> <p>16 Q. So the attendance roster is delivered to you.</p> <p>17 You do your own quality check on it. For your quality</p> <p>18 check, you are verifying that the folks that it says</p> <p>19 worked that day actually did and to make sure people</p> <p>20 aren't left off; is that right?</p> <p>21 A. Yes. I would compare that to the previous</p> <p>22 day's attendance to make sure that I was keeping track</p> <p>23 of who was there and who wasn't.</p> <p>24 Q. Okay. You don't want to be accidentally</p> <p>25 paying somebody who had, for example, already left the</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. How would that work?</p> <p>2 A. I would compile the list of all of the</p> <p>3 grievances that I received, what they received, what</p> <p>4 they expected and what the variance was, and then I</p> <p>5 would send that to Oklahoma, and then they would take</p> <p>6 care of importing it in their office.</p> <p>7 Q. Were you ever aware of anyone, after you had</p> <p>8 put in the gross-ups into Paycom, ever coming back and</p> <p>9 saying we're not paying that gross-up this time?</p> <p>10 A. I am not aware of that ever happening.</p> <p>11 Q. Never heard of that?</p> <p>12 A. No, sir.</p> <p>13 Q. I'm going to show you Exhibit 202. I'll start</p> <p>14 at the bottom here and we'll kind of scroll up and</p> <p>15 see -- and we'll talk about it.</p> <p>16 A. Can you scroll slightly down.</p> <p>17 Q. Yes, sir.</p> <p>18 A. Thank you. Okay. Okay. Okay. I'm finished.</p> <p>19 Q. So I want to direct your attention to the</p> <p>20 email from Mr. Beagle on November 17th which is inside</p> <p>21 this Exhibit 202. We're on Bates number 3209, Mammoth</p> <p>22 3209.</p> <p>23 MR. LOMBARDINO: Real quick, just for the</p> <p>24 record, November 17th, 2017.</p> <p>25 MR. MOULTON: Yes, 2017. Yeah.</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. So, Mr. Kinsey, is Mr. Beagle here in this</p> <p>2 email talking about what we've been talking about, about</p> <p>3 this process of grossing up the pay up to the day rate</p> <p>4 amount?</p> <p>5 A. He is discussing grossing up to the expected</p> <p>6 compensation. At this point -- it was around this point</p> <p>7 is whenever we were -- we had notified the employees</p> <p>8 that it wasn't going to be a true day rate because of,</p> <p>9 again, things -- reasons that were not made privy to me,</p> <p>10 but that we were still going to try to honor that</p> <p>11 compensation, but it wouldn't be a day rate. And so</p> <p>12 that's what he's discussing, is making sure that we get</p> <p>13 things adjusted accordingly.</p> <p>14 Q. Okay. So he's saying here that since they're</p> <p>15 paying 16 hours per day to get to the daily rate, that</p> <p>16 that's -- that's what you're saying, right, is that when</p> <p>17 they're shorted -- when they're working less than a full</p> <p>18 week, that there's going to be that adjustment to still</p> <p>19 get them to the expected pay even though the system is</p> <p>20 still doing it hourly, right?</p> <p>21 MR. STUKENBERG: Objection, form.</p> <p>22 MR. LOMBARDINO: Objection, misstates</p> <p>23 prior testimony, and objection, misleading.</p> <p>24 MR. STUKENBERG: And I'll go ahead and</p> <p>25 object. We're just reading documents again, Dave.</p>	<p style="text-align: right;">Page 64</p> <p>1 keep track of these gross-ups into a spreadsheet?</p> <p>2 MR. STUKENBERG: Objection, form. That's</p> <p>3 not what the document says.</p> <p>4 A. From what I read or from what I understand</p> <p>5 from the email, he wanted us to keep track of any</p> <p>6 adjustments that needed to be made so that those could</p> <p>7 be submitted for a special payroll.</p> <p>8 Q. Okay. Do you know what DD corrected means?</p> <p>9 A. Direct deposit.</p> <p>10 Q. Oh, okay. And that's where -- is that the</p> <p>11 column that you're supposed to put the gross-ups in?</p> <p>12 A. I honestly don't remember. I'm not even sure</p> <p>13 that I ever saw the spreadsheets from Shelly or Missy.</p> <p>14 I think I only ever saw my own. And at that time I had</p> <p>15 limited access within Paycom, so I couldn't make direct</p> <p>16 deposit corrections.</p> <p>17 Q. I'm showing you Exhibit 169. We have an email</p> <p>18 chain here.</p> <p>19 A. Okay.</p> <p>20 Q. All right. So in Exhibit 169, we have an</p> <p>21 email chain between -- that includes you and Missy Davis</p> <p>22 and Mr. Kalman, correct?</p> <p>23 A. As well as a few other individuals, but yes,</p> <p>24 sir.</p> <p>25 Q. Right. And in these emails, you guys are</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Go ahead, sir.</p> <p>2 A. From what I understand on reading the email</p> <p>3 and from what I do remember, that's what he is</p> <p>4 discussing, is adjusting the pay to make sure that</p> <p>5 employees were paid what they were expecting.</p> <p>6 Q. Other than Mr. Beagle talking about how this</p> <p>7 will be done in this gross-up system, is there anyone</p> <p>8 else that told you that this is what y'all would be</p> <p>9 doing?</p> <p>10 A. I don't remember who all I would have heard it</p> <p>11 from. Jeff was the HR director for Mammoth, but I know</p> <p>12 there was other people involved. I just don't remember</p> <p>13 who all was involved.</p> <p>14 Q. Did Mr. Beagle ever talk to you about whether</p> <p>15 or not he had got this approved, this day rate system,</p> <p>16 and whether the gross-up ever got approved by like an</p> <p>17 attorney or anyone?</p> <p>18 A. I know that there was conversations with</p> <p>19 attorneys. Beyond that, I do not know.</p> <p>20 Q. So you don't know what those conversations</p> <p>21 were and whether or not the attorney approved this or</p> <p>22 not?</p> <p>23 A. I do not. I was not privy to those</p> <p>24 conversations.</p> <p>25 Q. So in the top email, Mr. Beagle is saying to</p>	<p style="text-align: right;">Page 65</p> <p>1 sending spreadsheets back and forth with adjustments to</p> <p>2 payroll, correct?</p> <p>3 A. We're submitting them to Alex to take care of</p> <p>4 in Oklahoma City, yes, sir.</p> <p>5 Q. So in 31 -- in this exhibit, we have Bates</p> <p>6 numbers, right, Bates number 3158, and it spills onto</p> <p>7 3159. We have an email from you on January 9th. Do you</p> <p>8 see this email?</p> <p>9 A. Yes, sir.</p> <p>10 Q. So in this email, this is an example of where</p> <p>11 you are keeping track of the gross-ups in the</p> <p>12 spreadsheet and entering them, correct?</p> <p>13 A. From what I'm gathering, yes, sir.</p> <p>14 Q. And this is generally how it was done. You</p> <p>15 would keep track of the gross-ups in the spreadsheet.</p> <p>16 You would share them with the folks that are listed on</p> <p>17 these emails and submit them to Mr. Kalman?</p> <p>18 A. Yes, sir. At that point in time, yes, sir.</p> <p>19 Q. And did this process ever change?</p> <p>20 A. It did get to the point where I was handling</p> <p>21 inputting the adjustments myself instead of having to</p> <p>22 send them -- I think I still sent them, just a</p> <p>23 spreadsheet, to Alex and others, but I think at some</p> <p>24 point in the process, they told me just to enter it</p> <p>25 myself.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. And by enter it yourself, you mean just put it</p> <p>2 in the Paycom directly?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. After that process started where you</p> <p>5 just entered it into Paycom directly, are you aware of</p> <p>6 any further review process after you, or was that what</p> <p>7 was going out on a check?</p> <p>8 A. From what I understand, it was still being</p> <p>9 reviewed by -- at this point Michelle Poling had been</p> <p>10 hired as the HR director for Puerto Rico, and so I think</p> <p>11 she and Alex and others still like spot-checked it or</p> <p>12 QC'd it just to make sure that everything was still</p> <p>13 correct.</p> <p>14 Q. And in the response, you said "at this time."</p> <p>15 Are you talking about the time that I was asking about</p> <p>16 when you would enter them directly, or are you talking</p> <p>17 about when you're exchanging the spreadsheets?</p> <p>18 A. Whenever I would enter them directly.</p> <p>19 Q. All right. So when you're -- during the time</p> <p>20 you're exchanging the spreadsheets and weren't entering</p> <p>21 them indirectly, how would that process work?</p> <p>22 A. I would create the spreadsheets and then send</p> <p>23 those up to Oklahoma, and once it got to Oklahoma, I</p> <p>24 don't know the specifics.</p> <p>25 Q. So you would submit it -- specifically for</p>	<p style="text-align: right;">Page 68</p> <p>1 base salary plus a day rate, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And in Paycom, for the salaried people, you</p> <p>4 would put a direct day rate amount for the day rates</p> <p>5 that they were earning, in addition to their salaries,</p> <p>6 correct?</p> <p>7 A. For the salaried positions, I believe that I</p> <p>8 was entering a day rate, yes. I don't remember how I</p> <p>9 was coding it, but it would have been a dollar amount</p> <p>10 for each day.</p> <p>11 Q. And you were asking about whether or not you</p> <p>12 should do that same process for the linemen or if you</p> <p>13 should still be entering in the 16 hours, correct?</p> <p>14 A. No. In the context of this email, I'm asking</p> <p>15 if I should be entering 16 hours a day for the salaried</p> <p>16 positions or if I should be entering a day rate for the</p> <p>17 salaried positions. At this particular time, all</p> <p>18 linemen non-salaried positions were supposed to receive</p> <p>19 16 hours a day.</p> <p>20 Q. Okay. But so -- I mean, aren't you asking --</p> <p>21 aren't you also asking whether or not you should put day</p> <p>22 rate, like dollar amounts, for linemen, or no? Are you</p> <p>23 not asking that?</p> <p>24 MR. LOMBARDINO: Objection, asked and</p> <p>25 answered, argumentative and misleading. He just told</p>
<p style="text-align: right;">Page 67</p> <p>1 you, you would submit them to Kalman?</p> <p>2 A. Alex was my main point of contact in Oklahoma.</p> <p>3 Bethany was another individual in Oklahoma, but I don't</p> <p>4 remember what her job title was.</p> <p>5 Q. So you would submit them to Alex Kalman and</p> <p>6 Bethany, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Let's look at Exhibit 212.</p> <p>9 A. Okay.</p> <p>10 Q. So on this exhibit here, you guys are</p> <p>11 discussing how you enter the time in for the linemen,</p> <p>12 correct?</p> <p>13 A. I think we're more specifically talking about</p> <p>14 the ones that aren't linemen, but yes.</p> <p>15 Q. Okay. But with respect to the linemen, you're</p> <p>16 putting in 16 hours for every day that they're on the</p> <p>17 roster, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And for the folks that are paid -- there was</p> <p>20 some salaried folks on the island, right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you're also talking about them in this</p> <p>23 email?</p> <p>24 A. Yes, sir.</p> <p>25 Q. So for the salaried folks, they would get a</p>	<p style="text-align: right;">Page 69</p> <p>1 you the answer to that question.</p> <p>2 Q. You don't understand -- because it looks like</p> <p>3 Mr. Kalman might have interpreted it that way. Do you</p> <p>4 see that?</p> <p>5 MR. LOMBARDINO: Objection, calls for</p> <p>6 speculation.</p> <p>7 A. At the time of this email, it had been made</p> <p>8 clear to me that if you were not salaried, you received</p> <p>9 16 hours. If you were salaried, there was still some</p> <p>10 confusion as to how that needed to be entered. And</p> <p>11 that's what Alex and I are discoursing at this point, is</p> <p>12 how to handle those individuals.</p> <p>13 Q. Okay. And then he's also saying that now with</p> <p>14 Paycom being set up the way it is, once you put in the</p> <p>15 16 hours for the linemen, it should already be</p> <p>16 automatically kicking out what the hourly pay would be,</p> <p>17 right?</p> <p>18 A. At this point the non-salaried positions</p> <p>19 should have received the 16 hours a day in Paycom. If</p> <p>20 you worked a 14-hour shift, then Paycom was</p> <p>21 automatically going to calculate it to the expected</p> <p>22 compensation.</p> <p>23 Q. A 14-hour shift or 14 days?</p> <p>24 A. 14 days. I'm sorry. 14 days.</p> <p>25 Q. Oh, I see. Okay.</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. We were a biweekly pay, so the pay structure 2 was 14 days.</p> <p>3 Q. Right. Right.</p> <p>4 Let's look at Exhibit 183.</p> <p>5 A. Can you scroll back down?</p> <p>6 Q. Yes, sir. I'm sorry.</p> <p>7 MR. LOMBARDINO: Dave, while he's reading 8 that, are we going to break for lunch? Do you think 9 we're going to go into mid afternoon, or if you need 10 like only an hour, we can keep going and take a 11 five-minute break.</p> <p>12 MR. MOULTON: We might need to do a break.</p> <p>13 MR. LOMBARDINO: For lunch?</p> <p>14 MR. MOULTON: Yeah.</p> <p>15 MR. LOMBARDINO: Okay.</p> <p>16 A. Okay.</p> <p>17 Q. All right. So in Exhibit 183, we have you on 18 an email chain going back and forth with Missy Davis and 19 Mr. Kalman about adjustments that need to be made to 20 payroll, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And it looks like you're attaching this weekly 23 update for January 26th. Do you see that?</p> <p>24 A. Yes, sir.</p> <p>25 Q. So this is a spreadsheet that you would have</p>	<p style="text-align: right;">Page 72</p> <p>1 employees, right, or the ones working in Puerto Rico?</p> <p>2 A. I don't know what was on her spreadsheet.</p> <p>3 It's certainly possible that there were individuals in 4 Puerto Rico that she was making notes about, but by and 5 large, the only ones she should have been would have 6 been ones that were transitioning to Puerto Rico, to 7 make sure that they had like standby time or things of 8 that nature, per diems entered.</p> <p>9 Once they were in Puerto Rico, I'm not saying 10 she didn't help me, but that was my primary 11 responsibility, was to take care of Puerto Rico. Hers 12 was to take care of non-Puerto Rico 5 Star employees.</p> <p>13 Q. Okay. So during the transition weeks, your 14 jobs would kind of overlap because she would also -- you 15 would both have responsibilities for those transition 16 weeks?</p> <p>17 A. Yes, sir. For instance, if an individual flew 18 out on a Monday, then they would -- but maybe they had 19 orientation on Sunday, well, I may not know about 20 orientation and they may not have my contact 21 information. So in that situation where they got missed 22 on a roster, then she would advise me, hey, these people 23 need to be adjusted, FYI, and then at that point moving 24 forward, then it would be my responsibility to take care 25 of them.</p>
<p style="text-align: right;">Page 71</p> <p>1 been involved with, correct?</p> <p>2 A. Considering that's the header for Missy, I 3 would have received it. I don't know that I would have 4 really reviewed it since that was her business, but I'm 5 sure I would have sent my own.</p> <p>6 Q. Okay. When you're compiling the gross-ups 7 into a spreadsheet, are you doing it for Cobra and 8 Higher Power? I'm sorry. Are you doing it -- when 9 you're compiling the gross-ups into a spreadsheet, do 10 you do it for 5 Star and Higher Power?</p> <p>11 A. The spreadsheets that I compiled were for 12 anybody that was on the island, so that could have 13 included 5 Star, that could have included Higher Power 14 or Cobra.</p> <p>15 Q. Okay. Would Missy Davis also do those 16 spreadsheets?</p> <p>17 A. She would only be responsible for 5 Star 18 employees that were not in Puerto Rico.</p> <p>19 Q. Okay.</p> <p>20 A. We also had a lady in Higher Power in 21 Plainview, Texas doing the same thing, and she was only 22 responsible for issues pertaining to non-Puerto Rico 23 based Higher Power employees.</p> <p>24 Q. Okay. So if this spreadsheet here is being 25 shared with you in Puerto Rico, it's about Puerto Rican</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Okay. So you would definitely receive reports 2 from Missy Davis, particularly for these transition 3 points where she was letting you know, hey, these guys 4 are coming on island, we need these adjustments, and 5 then it would become your responsibility to take care of 6 it after that, right?</p> <p>7 A. Yes, sir.</p> <p>8 MR. LOMBARDINO: Objection, vague and 9 ambiguous.</p> <p>10 Q. We're going to look at the spreadsheet that's 11 attached to this email. This is Exhibit 184. It's 12 unmarked, but it's a native Excel spreadsheet called 13 Mammoth 3145_Confidential.</p> <p>14 So go ahead and take a look at this first tab 15 here, Mr. Kinsey, the corrections needed for January 26, 16 2018. Do you see that on your screen?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. Go ahead and take a look and let me 19 know when you're ready.</p> <p>20 A. I'm ready.</p> <p>21 Q. Okay. Is this a spreadsheet that you recall 22 seeing?</p> <p>23 A. I don't recall seeing it, but that doesn't 24 mean that I didn't see it.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. I mean, at this point these were individuals 2 responsible for Puerto Rico, and so I should have 3 reviewed it.</p> <p>4 Q. You said you should or shouldn't?</p> <p>5 A. I should have.</p> <p>6 Q. Oh, okay. And so this is an example of a 7 spreadsheet where the gross-ups would be tracked, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. This is similar to the spreadsheets that you 10 would have prepared, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. In fact, you probably used the same form, 13 right?</p> <p>14 MR. LOMBARDINO: Objection, calls for 15 speculation.</p> <p>16 A. In this case, it would have been the same form 17 because this was a template for Paycom.</p> <p>18 Q. Right. Okay. And so we can see on this 19 spreadsheet here that under the day rate adjustment 20 amount, we have the amounts listed that need to be -- 21 the adjustments that need to be made for gross-ups?</p> <p>22 A. That is correct. Those are the adjustments 23 that would need to be made. The headers specifically 24 were subjective.</p> <p>25 Q. I get you. It's fair.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I mean, I did a lot of stuff differently down 2 there just out of sheer necessity, but I feel like I 3 probably would have sent something akin to this to 4 Oklahoma.</p> <p>5 Q. Okay. And you would have done that for all 6 the linemen on the island, including the Higher Power 7 ones and the 5 Star ones, right?</p> <p>8 A. Yes, sir.</p> <p>9 MR. MOULTON: Mr. Lombardino, you 10 mentioned lunch. I think now is the time to do a quick 11 lunch if you want to do it. I think I've probably got a 12 couple more hours.</p> <p>13 MR. LOMBARDINO: So what time do you 14 want --</p> <p>15 MR. MOULTON: We can do like 30 minutes, 16 whatever works for you.</p> <p>17 MR. LOMBARDINO: Okay. I don't know what 18 building you're in. Is there like a place down there 19 that you can go grab -- is 30 minutes enough time for 20 you? Because we don't want you rushed. I mean, you're 21 going to have to use the rest room and call your wife 22 and all that stuff.</p> <p>23 THE WITNESS: Honestly, I don't have an 24 appetite right now.</p> <p>25 MR. LOMBARDINO: Okay. Then let's do</p>
<p style="text-align: right;">Page 75</p> <p>1 But we can see that this is the -- on the days 2 worked, though, where it shows the number of days here, 3 those numbers aren't subjective. That's the number of 4 days they worked, right?</p> <p>5 A. Correct.</p> <p>6 Q. And for these guys listed as 12's there, 7 they're only working 12 days in a 14-day pay period, 8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And so for these guys -- you know, if you work 11 less than the full 14, the hourly pay is going to be 12 less than what their full day rate would be, right?</p> <p>13 A. If you didn't work a full 14 days, then yes, 14 your expected compensation would have been short.</p> <p>15 Q. So in column I, those are the calculations 16 that would have been entered in to make up that 17 difference?</p> <p>18 MR. LOMBARDINO: Objection, calls for 19 speculation, since he didn't create this document.</p> <p>20 A. That's what they should have been, yes.</p> <p>21 Q. Okay. When you were doing it, you did it like 22 that?</p> <p>23 A. I won't say that I did because I don't 24 remember, but there is the possibility.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 77</p> <p>1 30 minutes. We'll restart at 12:30?</p> <p>2 MR. MOULTON: Sounds great.</p> <p>3 MR. STUKENBERG: Hey, Dave.</p> <p>4 MR. MOULTON: Yeah.</p> <p>5 MR. STUKENBERG: So I'm going to go ahead 6 and cancel my tennis. It looks like that's not going to 7 happen.</p> <p>8 MR. MOULTON: Make Harris do it.</p> <p>9 MR. STUKENBERG: Do what?</p> <p>10 MR. MOULTON: Make Harris attend. Make 11 Aaron, make Priya.</p> <p>12 MR. STUKENBERG: Yeah, okay. I'm going to 13 schedule -- I do need to schedule a call, though. Is it 14 cool if, say, 2 o'clock, we do like a 20-minute break so 15 I can do this call I need to make?</p> <p>16 MR. MOULTON: Can you push it to 3:00?</p> <p>17 MR. STUKENBERG: That would be difficult, 18 because there's a lot of people that all want to be 19 coordinated to make that happen.</p> <p>20 MR. MOULTON: All right. We'll break 21 again at 2:00.</p> <p>22 MR. STUKENBERG: Okay. I'll see you guys 23 about 12:30.</p> <p>24 VIDEOGRAPHER: Off the record at 11:57. 25 (Lunch recess taken 11:57-12:39.)</p>



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<p style="text-align: right;">Page 78</p> <p>1 VIDEOGRAPHER: Back on the record at 2 12:39. 3 Q. (BY MR. MOULTON) All right. Mr. Kinsey, 4 let's continue on. Let's look at Exhibit 172. And I 5 don't really have substantive questions about this. I 6 just want to get you familiar that this is an email 7 exchange where y'all are talking about corrections to 8 payroll. If you could just verify that for me. 9 A. Could you scroll to the bottom, please. 10 Q. Yes. 11 A. Okay. So this is just almost the same email, 12 I think, from Shelly's perspective instead of Missy's. 13 Could you scroll up, please. 14 Q. Yes. 15 A. Okay. So yeah, it's pretty much the same. 16 Okay. I'm ready. 17 Q. So this is an email chain where you're working 18 with the folks in this email about the corrections to 19 payroll for this pay period that it says in the subject 20 line, right? 21 A. That's what it appears to be, is payroll 22 corrections. 23 Q. And so let's go ahead and look at this 24 spreadsheet, which is another native Excel spreadsheet. 25 It's Exhibit 173 for the record. It's Bates numbered</p>	<p style="text-align: right;">Page 80</p> <p>1 A. At the very top where it says from Shelly 2 Wheeler. 3 Q. Okay. Oh, that's the attachment you're 4 talking about. Okay. 5 So according to you, Shelly Wheeler would have 6 been the one preparing that spreadsheet? 7 A. From what I -- 8 MR. LOMBARDINO: He said he doesn't know. 9 A. I'm assuming, but take that with a grain of 10 salt. 11 Q. Right. But is that -- she's with Higher 12 Power, right? 13 A. Right. But there could have been somebody 14 else within her office that prepared it and presented it 15 to her and then she sent it to us. I don't know who 16 created that one. 17 Q. Fair enough. 18 A. I mean, Shelly, Missy and I were the points of 19 contact, but they had other people within their offices 20 that helped them do a plethora of things. 21 Q. Now, if I understand your testimony from 22 earlier, at least with regards to the spreadsheets that 23 you would receive from Ms. Davis, you guys would have 24 been working together on spreadsheets that were for 25 folks that were transitioning to the island. Do you</p>
<p style="text-align: right;">Page 79</p> <p>1 Mammoth 3149_Confidential. 2 And we're going to look at the January 15th 3 tab. And I'm just going to have you look at this, 4 Mr. Kinsey, and ask you if you know what's going on with 5 this spreadsheet, if you could explain what it is. 6 A. I'm not real sure. 7 Q. Okay. So on column F is -- you know, draws 8 the eye where it says Hours #, 448, 440 and then 8. Do 9 you know -- can you explain what's going on? 10 MR. LOMBARDINO: Objection, asked and 11 answered. You're asking about a document he didn't 12 create. 13 A. I have no clue what's going on. 14 Q. Okay. Are you familiar with the description 15 of the issue that says rate conversion not accurate to 16 \$1200 per day? 17 A. I'm assuming that it's because their pay scale 18 in Paycom was not accurate. Beyond that, I don't know. 19 Q. Okay. You don't remember if it was you that 20 prepared this sheet or not? 21 A. Considering that was sent to the group from 22 Shelly Wheeler, I'm fairly confident I didn't prepare 23 it. 24 Q. Back on the email chain, can you tell me where 25 you think it was that Ms. Shelly Wheeler was sending it?</p>	<p style="text-align: right;">Page 81</p> <p>1 recall that testimony? 2 A. Yes, sir. And that would have been the same 3 thing with Shelly. 4 Q. Right. So if you were involved at this point 5 on spreadsheets like this or copied, it was because it 6 was folks that were transitioning over to Puerto Rico? 7 MR. STUKENBERG: Objection, form. It 8 could have been any number of payroll issues. 9 A. Given some of the texts within the 10 spreadsheet, I feel like it's referencing Puerto Rico 11 pay. What the hourly hours represents, I don't 12 understand. 13 Q. And I'm not asking you about that. I'm not 14 even asking you specifically about spreadsheets. 15 Let me ask it a different way. Ms. Wheeler 16 wouldn't have sent you spreadsheets that would have 17 dealt only with Higher Power people off in Puerto Rico, 18 right? 19 A. Normally she would not have. 20 MR. LOMBARDINO: Objection, speculation. 21 He doesn't know what's in her head. 22 Q. So normally what would happen, if you're 23 involved, it's because we're talking about workers that 24 are either transitioning or who are in Puerto Rico? 25 A. Transitioning to or transitioning from, yes,</p>

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<p style="text-align: right;">Page 82</p> <p>1 sir.</p> <p>2 Q. Right. Per these spreadsheets at least?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And just to be clear, you were in charge of</p> <p>5 doing -- entering the time and doing the gross-ups for</p> <p>6 guys in Puerto Rico, not for ones that are working</p> <p>7 stateside, right?</p> <p>8 MR. LOMBARDINO: Objection, form.</p> <p>9 A. In general, if they had nothing to do with</p> <p>10 Puerto Rico, I had nothing to do with payroll entry.</p> <p>11 There were times where standbys or per diems that took</p> <p>12 place in the states, they might enter that information</p> <p>13 and then I would take over once they arrived, and at</p> <p>14 times I might have entered that standby or per diem</p> <p>15 information. But if there was no relationship to</p> <p>16 Puerto Rico, then I should not have had anything to do</p> <p>17 with it.</p> <p>18 Q. Do you recall any changes to the payroll</p> <p>19 practice in July 2018?</p> <p>20 MR. LOMBARDINO: Objection, vague and</p> <p>21 ambiguous.</p> <p>22 A. I mean, could you provide context? I mean, I</p> <p>23 know that there was changes made, but I don't know</p> <p>24 anything specific in July.</p> <p>25 Q. Okay. Are you aware of any -- so the question</p>	<p style="text-align: right;">Page 84</p> <p>1 I mean, the beginning days of the power restoration,</p> <p>2 that was what the company thought we were going to be</p> <p>3 paying, was a day rate, and the moniker just stuck even</p> <p>4 though we weren't paying out a true day rate. So just</p> <p>5 everybody knew that when we said day rate, it referenced</p> <p>6 that daily expected compensation versus saying all that.</p> <p>7 Q. Okay. And so other than transitioning to the</p> <p>8 hourly rate system in July, what other changes do you</p> <p>9 recall that were going to happen as far as pay and</p> <p>10 keeping records of hours?</p> <p>11 MR. LOMBARDINO: Objection, misstates</p> <p>12 prior testimony and misleading.</p> <p>13 A. The only thing I remember is kind of what I</p> <p>14 stated earlier, that prior to this transition -- prior</p> <p>15 to the transition, it was kind of an all-inclusive -- I</p> <p>16 mean, we were providing housing, transportation, food.</p> <p>17 It was a big group. Employees didn't have to worry</p> <p>18 about clocking in. That's what this email is</p> <p>19 specifically referencing, is instead of now those in the</p> <p>20 office having to keep track of how many hours the guys</p> <p>21 did and did not work, it would now be the responsibility</p> <p>22 of the individual employees to keep track of how many</p> <p>23 hours they did and did not work. They were no longer</p> <p>24 expected to rely on us. They were going to have to have</p> <p>25 some ownership in that.</p>
<p style="text-align: right;">Page 83</p> <p>1 is just straight up, are you aware of -- can you recall</p> <p>2 any changes that were made as far as the payroll</p> <p>3 practice for the guys in Puerto Rico starting in July</p> <p>4 2018, like July 23rd to be specific?</p> <p>5 A. I know there was changes that took place</p> <p>6 around that time, yes, sir.</p> <p>7 Q. Okay. Can you describe to us the changes you</p> <p>8 do remember.</p> <p>9 A. I just know that we were transitioning from an</p> <p>10 expected daily compensation to non-daily expected</p> <p>11 compensation, is really all I remember, because I know</p> <p>12 that we also went from providing housing and food and</p> <p>13 all the other stuff to paying out of per diem to cover</p> <p>14 cost of food and housing and transportation.</p> <p>15 Q. Let's look at Exhibit 213. Go ahead and</p> <p>16 review this.</p> <p>17 A. Okay. So that would have been on July 5th,</p> <p>18 2018.</p> <p>19 Q. Right. So this would have been right before</p> <p>20 the changes you were talking about, right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So here with Beth, why were you talking to her</p> <p>23 about transitioning from a day rate to an hourly rate?</p> <p>24 A. Day rate was just a vernacular that we used</p> <p>25 versus the mouthful that is daily expected compensation.</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. This is really close to the same time that</p> <p>2 your employment was terminated, I think; is that right?</p> <p>3 A. My termination took place sometime in the</p> <p>4 beginning of August.</p> <p>5 Q. Okay. So you really didn't experience much</p> <p>6 of -- much of the changed system?</p> <p>7 A. At that particular time, we'd actually hired a</p> <p>8 new lady. I don't remember her name. And she was going</p> <p>9 to be responsible for taking care of payroll within</p> <p>10 Puerto Rico because she was a Puerto Rican resident, and</p> <p>11 that was about the time frame that I transitioned from</p> <p>12 managing payroll to this compliance coordinator</p> <p>13 position, and I was going to be based within the states.</p> <p>14 So a lot of the conversations, a lot of the</p> <p>15 expectations, I wasn't privy to.</p> <p>16 Q. Okay. And so can you say either way whether</p> <p>17 or not you know after July 23rd, 2018 if the workers in</p> <p>18 Puerto Rico were actually expected to keep track of</p> <p>19 their hours worked or not?</p> <p>20 A. That was the intention, but I do not know what</p> <p>21 actually took place. From what I do remember, the time</p> <p>22 that I did leave Puerto Rico, we were still within the</p> <p>23 restoration effort, and as long as we were within the</p> <p>24 restoration effort, employees were still getting paid</p> <p>25 16 hours a day. And I think once I left the island</p>

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<p style="text-align: right;">Page 86</p> <p>1 within the month of August, I believe is when they  2 transitioned to reconstruction, which was the whole new  3 billing, pay rates, all new everything.  4 Q. Okay. And so --  5 A. And after reviewing some of these emails, I do  6 want to clarify a question kind of in the beginning.  7 You asked about the circumstances of my termination. It  8 was in part to this, because employees were being paid a  9 per diem, and they were expected to provide their own  10 housing. And at least for a pay period, I was a part of  11 that process because I issued pay to employees that  12 weren't on the island for the per diem -- not their  13 hourly rate, but their per diem.  14 And that was what I was terminated for, is it  15 was determined that we were not supposed to pay  16 employees per diem while off the island, and because I  17 did, they said I violated company policy and terminated  18 me.  19 Q. Okay. So when I -- let's talk about that.  20 When I asked you about that -- I asked you several  21 questions, and you weren't able to remember any details  22 about why you were terminated. Did you do anything to  23 refresh your memory to now remember?  24 A. No. I just --  25 MR. LOMBARDINO: Objection, misstates</p>	<p style="text-align: right;">Page 88</p> <p>1 we weren't supposed to do that.  2 Q. Okay. So with the -- with these per diems  3 that you were paying, I'm a little confused, because I  4 thought that your role with payroll was to basically get  5 it ready, then someone else would review and then decide  6 what to pay and what not to pay.  7 A. Well, I would enter the data and then they  8 would verify it and they would send it off to the bank,  9 so I was still expected to enter in necessary  10 information for them to be able to process it.  11 Q. So who was the person that would be reviewing  12 your work before they would pay it?  13 MR. LOMBARDINO: Objection, speculation.  14 A. I don't know. Someone in Oklahoma.  15 Q. And to be clear, what I understand is that you  16 would -- at least from your point of view, you were  17 sending it to Mr. Kalman, right?  18 A. I think he was still employed at that point.  19 Q. Right. Mr. Kalman. And then there was one  20 other person. I forget their name. But who else would  21 you send it to besides Mr. Kalman?  22 A. I didn't really send it to anyone. It was --  23 once I got done processing my information, then they had  24 a chance to review it and submit it to -- actually hit  25 the submit button, I mean, because we were a two-week</p>
<p style="text-align: right;">Page 87</p> <p>1 prior testimony.  2 A. No, I didn't do anything to refresh my memory.  3 Just through the course of our conversation and reading  4 some of these emails, information just came back to me.  5 Q. So remembering more about that conversation  6 with Ms. Poling about why you were terminated?  7 A. Yes, sir.  8 Q. So it's your testimony -- let me make sure I  9 understand. You were terminated because you were paying  10 per diem to workers even though they weren't on the  11 island, which you weren't supposed to be doing?  12 A. That was -- from what I remember, that was the  13 reason she gave me. I paid them the per diem while they  14 were off the island because that's what I was -- I felt  15 like I was supposed to be doing.  16 Q. Okay. Why did you feel like you were supposed  17 to be doing that?  18 A. Through the course of conversations that took  19 place, and then we were expecting employees to maintain  20 their own housing while -- whether they were on the  21 island or off the island. And based on the  22 conversations we were having within the office, it  23 was -- I was under the impression that we should have  24 been paying them that per diem, and apparently a policy  25 had been written, without my knowledge, that said that</p>	<p style="text-align: right;">Page 89</p> <p>1 behind process. So there was a time frame from when I  2 said, hey, I'm done, to the time that it actually got  3 submitted. And somebody in Oklahoma reviewed it. Who  4 that was, I don't know.  5 Q. Do you know who had access to it in Oklahoma?  6 MR. LOMBARDINO: Objection, calls for  7 speculation, lacks foundation.  8 A. Anybody that had administrative payroll access  9 to Paycom.  10 Q. I'm asking you, did you know who the people  11 were that had administrative payroll access?  12 A. I --  13 MR. LOMBARDINO: Objection, asked  14 answered.  15 Q. I'm sorry?  16 A. I do not know.  17 Q. And to be clear, I'm not asking if you know  18 every single person. Do you know anyone that did?  19 A. I know that Alex had the ability. Whether or  20 not he did, I do not know.  21 Q. So just to be clear, what ability did Alex  22 have, according to your knowledge?  23 A. He was the primary payroll individual for  24 several of the Mammoth companies.  25 Q. Okay.</p>

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<p style="text-align: right;">Page 90</p> <p>1 A. I mean, I don't know what his specific</p> <p>2 responsibilities were.</p> <p>3 Q. And just to be clear, you know, because you're</p> <p>4 the one that took us back to the termination issue, was</p> <p>5 there anything about your termination that had to do</p> <p>6 with entering in dollar amounts into Paycom?</p> <p>7 A. From what I remember, it was specific to the</p> <p>8 per diems, and per diems were issued in dollar amounts.</p> <p>9 Q. Do you also recall in Paycom entering in</p> <p>10 dollar amounts that were equivalent to day rates, like</p> <p>11 under a Code DYC?</p> <p>12 A. Only for salary position people, never for --</p> <p>13 I wasn't supposed to do it for non-salary people.</p> <p>14 Q. Right. So I'm asking you, even though you</p> <p>15 weren't supposed to, do you ever recall doing that?</p> <p>16 A. I don't remember doing it.</p> <p>17 Q. Okay. Did you ever get in trouble for doing</p> <p>18 that?</p> <p>19 A. No, sir.</p> <p>20 Q. That you can recall?</p> <p>21 A. That I can recall, correct.</p> <p>22 Q. Just to be clear, entering in dollar amounts</p> <p>23 like day rate amounts for linemen, like if they missed a</p> <p>24 day or to correct their pay, had nothing to do with your</p> <p>25 termination?</p>	<p style="text-align: right;">Page 92</p> <p>1 trying to limit the number of day rate entries you put</p> <p>2 into the system, what are you talking about there?</p> <p>3 A. It would be the 16 hours per day.</p> <p>4 Q. Why would you be trying to limit the number of</p> <p>5 16's you would put? Wouldn't you just put in what was</p> <p>6 on the roster?</p> <p>7 A. Well, that's what was on the -- I mean, if you</p> <p>8 were present on the roster during the restoration</p> <p>9 effort, then you got 16 hours.</p> <p>10 Q. Right.</p> <p>11 A. And I was looking forward to the time when</p> <p>12 I -- the employees could clock in and out and it would</p> <p>13 make doing payroll on my end less stressful.</p> <p>14 Q. So let's make sure we're looking at the same</p> <p>15 thing, because it seems like we're talking about two</p> <p>16 different things. I may be wrong. Let's just look at</p> <p>17 your email here.</p> <p>18 I'll do what I can this round to try and limit</p> <p>19 the number of day rate entries I put into the system.</p> <p>20 What's a day rate entry?</p> <p>21 MR. LOMBARDINO: Objection, asked</p> <p>22 answered. He just told you what he meant by this email.</p> <p>23 A. I mean, the day rate was the vernacular that</p> <p>24 we used, and it would have been having to go through and</p> <p>25 make sure that the 16 hours per day and the adjustments</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Correct.</p> <p>2 MR. LOMBARDINO: Objection, misleading.</p> <p>3 Q. I want to go back to talk more about this</p> <p>4 transition time around July 23rd of 2018, between the</p> <p>5 day rate or expected compensation, as you would put it,</p> <p>6 and the new system after that time. So I'm going to</p> <p>7 show you what's been labeled as Exhibit 190. Go ahead</p> <p>8 and review this for me.</p> <p>9 A. Is that the bottom of the email?</p> <p>10 Q. It is. I'll scroll down so you can verify.</p> <p>11 A. Okay.</p> <p>12 Q. What's going on with this email chain? Can</p> <p>13 you explain it?</p> <p>14 A. That was part of the reason why I asked if</p> <p>15 that was all of it, because it seems like there's some</p> <p>16 context missing.</p> <p>17 Based on what I'm reading, it sounds like we</p> <p>18 were just trying to transition from having to enter</p> <p>19 16 hours a day and then doing the adjustments to just</p> <p>20 the standard hourly rate with no adjustments.</p> <p>21 Q. And transitioning to a standard hourly rate</p> <p>22 with no adjustments would be a lot easier, right?</p> <p>23 A. It would, because we no longer had to do</p> <p>24 adjustments.</p> <p>25 Q. Right. And when you mention that you're</p>	<p style="text-align: right;">Page 93</p> <p>1 were taken care of.</p> <p>2 Q. Okay. So the day rate entry is the 16?</p> <p>3 A. Yes.</p> <p>4 Q. Let's look at some example pay stubs. It's</p> <p>5 going to be Exhibit 170.</p> <p>6 MR. MOULTON: Ms. Court Reporter, before</p> <p>7 we move on, on that last exhibit, did I mention it was</p> <p>8 190?</p> <p>9 THE REPORTER: One second. Let me look.</p> <p>10 Yes, you did say "show you what's been marked Exhibit</p> <p>11 190," yes.</p> <p>12 MR. MOULTON: Thank you so much. Wanted</p> <p>13 to make sure.</p> <p>14 Q. All right, sir. I'm going to show you Exhibit</p> <p>15 170. Actually, to make this easier, I'm going to open</p> <p>16 it up a little bit differently while we get started. In</p> <p>17 Exhibit 170, we have a pay stub for Mr. Justin Washburn,</p> <p>18 correct?</p> <p>19 A. Okay.</p> <p>20 Q. And can you verify for me on this pay stub --</p> <p>21 when you see -- you can see this is an hourly in</p> <p>22 Puerto Rico, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So this means it's not a salaried worker?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 94</p> <p>1 Q. And it's a Puerto Rican -- it's assigned to</p> <p>2 the Puerto Rico Department, which would have been a</p> <p>3 department you were working with during this time,</p> <p>4 correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. In looking at this paycheck, when we see 32,</p> <p>7 that corresponds to two days worked, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And so we can see here it's \$37.84 rate. To</p> <p>10 refresh your memory, we can go look at Exhibit 151,</p> <p>11 which I'll just pull up for you, unless you already</p> <p>12 know. Do you remember what that \$37.84 rate corresponds</p> <p>13 to in terms of expected pay?</p> <p>14 A. I don't remember.</p> <p>15 Q. All right. If we look on 151, we can tell.</p> <p>16 After looking at 151, can you tell me which day rate the</p> <p>17 \$37.84 is associated with?</p> <p>18 A. The \$37.84 would have been associated with a</p> <p>19 Class B lineman.</p> <p>20 Q. Right. Which is \$800 per day in the chart?</p> <p>21 A. That's what they would have expected to</p> <p>22 receive, compensation, yes.</p> <p>23 Q. So back to Exhibit 170, we can see with two</p> <p>24 days at the \$800 dollar level, which corresponds to</p> <p>25 \$37.84 per hour, he got paid \$1600, which is two times</p>	<p style="text-align: right;">Page 96</p> <p>1 Report for him. Can you see that this is a -- I just</p> <p>2 jumped down in this document to the Time Detail Report</p> <p>3 for Mr. Washburn.</p> <p>4 A. It's really hard to read, but --</p> <p>5 Q. Let me just scroll --</p> <p>6 MR. LOMBARDINO: For the record, do you</p> <p>7 want to use a Bates number or -- because when you're</p> <p>8 reading back, the record will just say this document,</p> <p>9 that document.</p> <p>10 MR. MOULTON: So we're in Exhibit 170</p> <p>11 still, but we've just jumped down to Mammoth 7081 in</p> <p>12 that document. Thank you.</p> <p>13 Q. So we're going to the pay period we were just</p> <p>14 looking at, the one ending May 27. Can you see it now?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you see where it says Fixed (DYM) and</p> <p>17 there's \$800 under the Missing -- I'm sorry, under the</p> <p>18 Dollars column?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And then it has the Supervisor Approval is</p> <p>21 jkinsey. Do you see that?</p> <p>22 A. Yes, sir.</p> <p>23 Q. What does it mean when it says Supervisor</p> <p>24 Approval, jkinsey, on this document?</p> <p>25 A. That I would have been the one that clicked</p>
<p style="text-align: right;">Page 95</p> <p>1 \$800, correct? Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And what I wanted to ask you about is</p> <p>4 specifically under the Day Rate column -- or the</p> <p>5 Day Rate line, if you will, you see there's an \$86.40</p> <p>6 added to his regular and overtime earnings?</p> <p>7 A. Okay.</p> <p>8 Q. This is an example of one of the gross-ups,</p> <p>9 right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. So when you were doing gross-ups for workers,</p> <p>12 this is the process you would have done. You would have</p> <p>13 gone to see what the expected pay was. You would have</p> <p>14 seen what the hourly and overtime was and then added the</p> <p>15 difference, like in this case, \$86.40, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. If we look at the next pay stub for</p> <p>18 Mr. Washburn in Exhibit 170, which is Bates numbered</p> <p>19 Mammoth 7080, we see a pay period for May 14 to May 27</p> <p>20 for Mr. Washburn. Do you see that?</p> <p>21 A. Uh-huh. Yes, sir.</p> <p>22 Q. Under the Day Rate column, we have just an</p> <p>23 \$800 entered in. Can you explain that?</p> <p>24 A. Other than I did it, no, sir.</p> <p>25 Q. And to be fair, let's look at the Time Detail</p>	<p style="text-align: right;">Page 97</p> <p>1 approve on it.</p> <p>2 Q. Okay.</p> <p>3 A. Which was normal for all employees on the</p> <p>4 island.</p> <p>5 Q. I mean, I've seen your name literally on</p> <p>6 thousands of pieces of paper just like this. That's how</p> <p>7 it worked, right? You were the one putting this in and</p> <p>8 it would show you as approving it?</p> <p>9 A. That I would approve it and then it would get</p> <p>10 sent to Oklahoma for final processing.</p> <p>11 Q. As far as you're aware, is there anything in</p> <p>12 Paycom we could look at to see if there was further</p> <p>13 approvals done after you?</p> <p>14 A. Not that I'm aware of, because they could have</p> <p>15 approved of it and not changed it, or they could have</p> <p>16 sent it back to me for an adjustment. I don't remember.</p> <p>17 Q. Okay. But here it says jkinsey, May 27, 2018,</p> <p>18 which is the same day as the entry, right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So the way Paycom works, if someone else had</p> <p>21 come in after you and changed your approval, would it</p> <p>22 record here?</p> <p>23 A. It should --</p> <p>24 MR. LOMBARDINO: Objection, calls for</p> <p>25 speculation, lacks foundation, calls for speculation.</p>

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<p style="text-align: right;">Page 98</p> <p>1 A. It should have -- if somebody changed</p> <p>2 anything, they would have had to have unapproved it and</p> <p>3 then reapproved it.</p> <p>4 Q. Okay. And could they unapprove and reapprove</p> <p>5 as you?</p> <p>6 A. No.</p> <p>7 Q. You had your own login?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And you didn't share that login?</p> <p>10 A. I did not.</p> <p>11 Q. So back to the dollar amount entered here, can</p> <p>12 you tell us why for an hourly worker you put in this</p> <p>13 dollar amount of \$800 and not the 16?</p> <p>14 A. I don't know why I would have done that.</p> <p>15 Q. Okay. We're going to look at another pay stub</p> <p>16 we have in this Exhibit 170. Let's go to 14 -- Tyler</p> <p>17 Halford, which is Mammoth 533 Bates number, and the pay</p> <p>18 period we're looking at is March 5th to March 18th. Do</p> <p>19 you see this on your screen?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Can you read it?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So, again, we have another person here who is</p> <p>24 at that \$37.84 or \$800 per day rate. Do you see that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 100</p> <p>1 a day, it would not have been exactly an even number.</p> <p>2 Q. Right. There would have been some rounding.</p> <p>3 It would have been off by less than a dollar?</p> <p>4 A. Correct.</p> <p>5 Q. Right. But on this paycheck, we have one</p> <p>6 that's not the full week like we've talked about. When</p> <p>7 it wasn't the full week, this \$432 is the gross-up to</p> <p>8 get him to his expected earnings, correct?</p> <p>9 A. To get him close to it, yes.</p> <p>10 Q. Is \$8,000 close to it or is it exactly?</p> <p>11 A. It was close --</p> <p>12 MR. LOMBARDINO: Objection, asked</p> <p>13 answered.</p> <p>14 A. I mean, it would have been close, because, I</p> <p>15 mean, there would have been some cents associated with</p> <p>16 that.</p> <p>17 Q. Okay. So you're saying for all practical</p> <p>18 reasons, it's the expected pay?</p> <p>19 MR. LOMBARDINO: Objection, asked and</p> <p>20 answered.</p> <p>21 A. I would say for all intents and purposes, he</p> <p>22 worked ten days and he was expecting around \$8,000, and</p> <p>23 that's what we adjusted it to.</p> <p>24 Q. On Mammoth 535 inside of Exhibit 170, pay</p> <p>25 period for Tyler Halford, February 5th to February 18th,</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Okay. And so 160 hours on his paycheck</p> <p>2 corresponds to ten days work, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And so at that \$800 level, his pay -- his</p> <p>5 expected pay is \$8,000, and that's what he got?</p> <p>6 A. I didn't know if you were asking me or telling</p> <p>7 me.</p> <p>8 Q. I'm asking.</p> <p>9 A. I mean, he was at \$37.84 and he worked for ten</p> <p>10 days, and his expected compensation should have been</p> <p>11 around that \$8,000 mark.</p> <p>12 Q. Right. And, in fact, because the hourly pay</p> <p>13 and the overtime didn't get him there, he has a gross-up</p> <p>14 that puts it exactly to that expected pay of \$8,000,</p> <p>15 right?</p> <p>16 A. Well, the expected pay wasn't exactly \$8,000</p> <p>17 and zero cents. I mean, \$800, at that rate, it was</p> <p>18 slightly different than that. But that was just what we</p> <p>19 adjusted it to when we had to do adjustments.</p> <p>20 Q. So back on Exhibit 151, is it your testimony</p> <p>21 that when it says for a person who's \$800 per day,</p> <p>22 Puerto Rico storm, that that's not what they can expect?</p> <p>23 MR. LOMBARDINO: Objection, asked and</p> <p>24 answered.</p> <p>25 A. Over the course of 14 days, based on 16 hours</p>	<p style="text-align: right;">Page 101</p> <p>1 again, we have him at the \$800 or \$37.84 hourly rate,</p> <p>2 and he worked five days in this one, correct?</p> <p>3 A. I guess. If it's 16 times five, yeah, would</p> <p>4 make sense.</p> <p>5 Q. Right. And \$800 times five is \$4,000, which</p> <p>6 is exactly his expected pay.</p> <p>7 A. Well, \$4,000 is close to what the expected pay</p> <p>8 would have been.</p> <p>9 Q. And this day rate of \$518.72 is exactly the</p> <p>10 amount needed to get him to \$4,000 above his hourly pay,</p> <p>11 correct?</p> <p>12 A. The \$500 is what would have gotten us close to</p> <p>13 the expected rate.</p> <p>14 Q. Okay. And it's not \$500. It's \$518.72,</p> <p>15 correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Inside Exhibit 170, we're going to scroll down</p> <p>18 to page Mammoth 23. That's the Bates number. Pay</p> <p>19 period is April 30th to May 13th, and it's for Robby</p> <p>20 Alvear. Do you see this document, sir?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. Under Day Rate, we just have \$6,400</p> <p>23 entered as -- looks like to be one of these dollar</p> <p>24 amount ones. Would you agree with that?</p> <p>25 A. Yeah, that's what it looks like.</p>



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<p style="text-align: right;">Page 102</p> <p>1 Q. Okay. And we can verify if we go to his</p> <p>2 pay -- or his time records, the Time Detail Report,</p> <p>3 which is Mammoth 24. We can see here that he has \$800</p> <p>4 entered in as a Fixed (DYR) code by jkinsey for eight</p> <p>5 days, correct?</p> <p>6 A. That's what it shows.</p> <p>7 Q. Right. Can you explain why you were entering</p> <p>8 in dollar amounts under the Day Rate code?</p> <p>9 A. I cannot explain it. I don't know why I would</p> <p>10 have done it.</p> <p>11 Q. Now, if you had put in his -- if you would</p> <p>12 have put in his 16 hours per day, he still would have</p> <p>13 got paid the same amount with the gross-up, right?</p> <p>14 A. It would --</p> <p>15 MR. LOMBARDINO: Objection, misleading.</p> <p>16 Q. Pardon?</p> <p>17 A. Somebody else started talking.</p> <p>18 If I would have entered 16 hours per day with</p> <p>19 the adjustment, it would have been close to the \$6,400.</p> <p>20 Q. Okay. It would have been off by a few</p> <p>21 pennies?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Now, after reviewing these documents of you</p> <p>24 entering in dollar amounts per day, do you recall ever</p> <p>25 anyone complaining at you because of that or raising an</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Can you explain to me what's going on with</p> <p>2 this email, Exhibit 214.</p> <p>3 A. Looks like somebody transitioned to the island</p> <p>4 and I was making sure that we were getting him paid</p> <p>5 correctly.</p> <p>6 Q. Okay. Are you familiar with the payroll code</p> <p>7 called Day Rate?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What is the Day Rate payroll code used for?</p> <p>10 A. Initially it was used to do -- for us to be</p> <p>11 able to enter dollars per day. When I first started on</p> <p>12 the island, I had regular OT and Day Rate as my entry</p> <p>13 options.</p> <p>14 Q. Okay. So on the payroll records we were just</p> <p>15 looking at, on the pay stubs, when it has a line,</p> <p>16 Day Rate, that corresponds to the payroll code of</p> <p>17 Day Rate?</p> <p>18 A. Yes. The DYR on the timesheets would be</p> <p>19 Day Rate.</p> <p>20 Q. Okay. So the DYR is the code for the Day Rate</p> <p>21 line in the pay stubs?</p> <p>22 A. Correct. And we were using it to make the</p> <p>23 adjustments.</p> <p>24 Q. To be able to access these codes like</p> <p>25 Day Rate, did you need permission?</p>
<p style="text-align: right;">Page 103</p> <p>1 issue with you or writing you up or anything negative</p> <p>2 about it?</p> <p>3 A. I don't recall anything.</p> <p>4 Q. So for these Paycom entries where you would</p> <p>5 have put in the dollar amounts under Day Rate like we</p> <p>6 just looked at, those would have been reviewed by other</p> <p>7 people, right?</p> <p>8 A. Should have been.</p> <p>9 Q. Should have been. Okay.</p> <p>10 So it should have been reviewed by folks like</p> <p>11 Mr. Kalman that you were submitting them to, right?</p> <p>12 A. I would think so.</p> <p>13 Q. Okay. And you don't recall Mr. Kalman ever</p> <p>14 telling you, hey, we're not supposed to do it that way?</p> <p>15 A. I don't remember him ever telling me that.</p> <p>16 Q. So as far as you knew, it was okay to do that?</p> <p>17 A. As far as I knew, that was an acceptable</p> <p>18 practice.</p> <p>19 Q. And so you were -- as far as you're concerned,</p> <p>20 Cobra and Mammoth were totally fine with that?</p> <p>21 A. Yes.</p> <p>22 Q. Let's look at Exhibit 214. Go ahead and take</p> <p>23 a look at that and let me know when you're ready to talk</p> <p>24 about it.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Yes. Effectively, an administrator had to set</p> <p>2 up your permissions for you to be able to access or</p> <p>3 input anything.</p> <p>4 Q. Okay. So this make sense then, that Missy</p> <p>5 Davis, for example, to be able to use the Day Rate code,</p> <p>6 would have to get authorization from someone who had it,</p> <p>7 like Mr. Kalman?</p> <p>8 A. Yes.</p> <p>9 MR. LOMBARDINO: Objection, speculation.</p> <p>10 Q. Do you recall if Mr. Kalman ever -- do you</p> <p>11 remember how you got your access to the Day Rate code?</p> <p>12 A. That was the way it was when I started.</p> <p>13 Q. So you actually had to get -- be given access</p> <p>14 to the Day Rate code to be able to enter in Day Rate --</p> <p>15 or dollar amounts under Day Rate?</p> <p>16 A. Yes, sir, because in the beginning days of the</p> <p>17 restoration effort, that was what we thought we were</p> <p>18 going to do, was pay people a straight day rate. And</p> <p>19 then as conversations were taking place with legal, it</p> <p>20 was determined we couldn't issue a straight day rate for</p> <p>21 reasons. But that was the access that I had, so that's</p> <p>22 what I had been told to use to make the adjustments.</p> <p>23 Q. And by the adjustments, we're talking about</p> <p>24 the gross-ups we talked about earlier, right?</p> <p>25 A. Yes, sir.</p>

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<p style="text-align: right;">Page 106</p> <p>1 Q. Let's look at Exhibit 215. Go ahead and take 2 a look at this and let me know when you're ready. 3 A. Okay. 4 Q. So were you asking Mr. Kalman if you could 5 just enter in dollar amounts for days worked under the 6 Day Rate code? 7 A. That's what it appears to say. 8 Q. Okay. And that would have been like what we 9 were just looking at in the payroll records where we saw 10 like an entry of \$800 for a worker. Do you recall that? 11 A. Yes, sir. 12 Q. And what did you understand that Mr. Kalman's 13 response to be, that you were supposed to do it that way 14 or not? 15 A. Based on this email, I should not have been 16 doing that. 17 Q. Do you recall getting this email? 18 A. I got a lot of emails. I was in Puerto Rico, 19 and this was the day after Christmas. 20 Q. Fair enough. 21 A. No, I don't recall receiving this one. 22 MR. STUKENBERG: What's the exhibit 23 number, Dave? 24 MR. MOULTON: 215. 25 MR. STUKENBERG: Thanks.</p>	<p style="text-align: right;">Page 108</p> <p>1 What does that mean as far as access? 2 MR. LOMBARDINO: Objection, calls for 3 speculation. 4 A. I only had -- at that particular time, I only 5 had the ability to see the Puerto Rico department, which 6 meant I could only make -- enter hours if they were in 7 Puerto Rico department. So what Missy is saying is, if 8 she -- before the guys transitioned, I wouldn't be able 9 to enter any time for them. Once they returned back to 10 the states, I wouldn't be able to enter any time for 11 them. And so she's just clarifying that during those 12 times, she would be taking care of their time entry. 13 Once they were in Puerto Rico, I would be taking care of 14 their time entry. 15 Q. So in Exhibit 217, take a look at this one and 16 let me know when you're ready. 17 MR. LOMBARDINO: We've been almost going 18 for an hour, so if we have a good break time. I 19 generally like to take a break every hour. I don't want 20 to interrupt your flow, Dave. So when you get to -- at 21 the end of this exhibit or whatever, you know, we can 22 take a five-minute break, stretch our legs. 23 A. Dave, can you scroll back to the bottom. I 24 wasn't done reading it. 25 Q. Yeah. Sure.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. And so sitting here today, even after 2 reviewing some of these emails, you don't recall ever 3 being told not to enter in dollar amounts under the 4 Day Rate code? 5 A. Other than this specific instance, I don't 6 remember any other instances, but if one happened, it's 7 certainly possible it could have happened other times. 8 Q. Okay. We're going to look at Exhibit 216. 9 A. Okay. 10 Q. So this is an email from Missy Davis to you, 11 correct? 12 A. Yes, sir. 13 Q. And she's talking about moving workers inside 14 the -- into the pay -- I'm sorry, into the Puerto Rico 15 department in Paycom and out of the Puerto Rico 16 department in Paycom, correct? 17 A. Yes, sir. 18 MR. STUKENBERG: Objection. The document 19 says what it says, Dave. If you want to ask him a 20 question, ask him a question. Don't just ask does the 21 document say this. 22 Q. I'm sorry, sir. What was your answer? 23 A. That's what it appears to say. 24 Q. Right. What is the significance of that, 25 moving folks in and out of the Puerto Rico department?</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Okay. I'm ready. Okay. 2 Q. All right. So you notice that the dates on 3 these emails are right around Christmas, right, December 4 27th, 2017? 5 A. Yes, sir. 6 Q. Do you recall a holiday bonus that was paid 7 companywide? 8 A. I know that there was one paid, yes, sir. 9 Q. Right. And do you recall if the amount was 10 \$1,111.11 for everyone? 11 A. I think that's accurate. 12 Q. And this email down here on December 26th, 13 when you mention that they're no longer in the system to 14 receive the bonus, you're talking about Christmas bonus, 15 correct? 16 A. I don't necessarily think it was specific to 17 the fact that it was Christmastime. It was just a bonus 18 that the senior management decided to pay out. 19 Q. Oh, okay. So not necessarily Christmas, but 20 it was one that everyone got in the company? 21 A. It was the Puerto Rico employees, so not 22 everybody in the company got it. But I remember the 23 significance of the \$1,111, because that was 24 management's way of saying that we were the best, that 25 we were number one.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Q. Got it. Okay. So this email is talking about</p> <p>2 that bonus, that \$1,111, you're the best bonus to the</p> <p>3 guys in Puerto Rico, correct?</p> <p>4 A. <b>That is part of this email chain, yes, sir.</b></p> <p>5 Q. And then the other part is about -- again, we</p> <p>6 have -- there's some information here where you're</p> <p>7 talking about Missy moving names back into her group,</p> <p>8 and once she does that, they're no longer visible to</p> <p>9 you; is that right?</p> <p>10 A. <b>Correct.</b></p> <p>11 MR. MOULTON: All right. Because</p> <p>12 Mr. Lombardino needs a break every hour, we will take a</p> <p>13 short five-minute break.</p> <p>14 VIDEOGRAPHER: Off the record at 1:30.</p> <p>15 (Recess taken 1:30-1:42.)</p> <p>16 VIDEOGRAPHER: Back on the record at 1:42.</p> <p>17 Q. (BY MR. MOULTON) Mr. Kinsey, I promise this</p> <p>18 is starting to get -- we're starting to see the light at</p> <p>19 the end of the tunnel. You won't be here hopefully too</p> <p>20 much longer.</p> <p>21 I want to show you Exhibit 204. It's an</p> <p>22 email. I'll scroll down to the bottom and let you</p> <p>23 review them, if you will.</p> <p>24 A. <b>Okay. I'm good.</b></p> <p>25 Q. In this email chain, you mention some</p>	<p style="text-align: right;">Page 112</p> <p>1 I don't know what "that" means.</p> <p>2 Q. You worked on getting the gross-ups fixed for</p> <p>3 the next check?</p> <p>4 MR. LOMBARDINO: Objection, misstates</p> <p>5 prior testimony.</p> <p>6 A. <b>Based on the text, that's what it appears to</b></p> <p>7 <b>be.</b></p> <p>8 Q. Okay. Do you recall what actually happened?</p> <p>9 Did they get their gross-ups paid eventually?</p> <p>10 A. <b>They should have. I mean, I can't say with</b></p> <p>11 <b>certainty that they did, but they should have.</b></p> <p>12 Q. Okay. And why do you say that they should</p> <p>13 have got paid their gross-ups?</p> <p>14 A. <b>Because they were -- I mean, we had said that</b></p> <p>15 <b>we were going to provide a certain pay rate for the</b></p> <p>16 <b>guys, and if they were working on the island, then they</b></p> <p>17 <b>should have received that pay rate.</b></p> <p>18 Q. Now, is it fair to say that you were</p> <p>19 processing payroll for -- at least at some point for</p> <p>20 hundreds of guys working on the island?</p> <p>21 A. <b>That's accurate.</b></p> <p>22 Q. And it can get really busy with people coming</p> <p>23 on and off and the adjustments that have to be made,</p> <p>24 correct?</p> <p>25 A. <b>That is correct.</b></p>
<p style="text-align: right;">Page 111</p> <p>1 complaints that you had heard from the workers. Can you</p> <p>2 tell us what the complaints were about.</p> <p>3 A. <b>I don't recall. I mean, I can make an</b></p> <p>4 <b>assumption if you want me to.</b></p> <p>5 Q. Well, let me -- looking at exhibit -- looking</p> <p>6 at this Exhibit 204 -- and it's Bates number 3170. Your</p> <p>7 email on January 12th, can you tell us based on that</p> <p>8 what the complaints were?</p> <p>9 A. <b>I'm assuming it had to do with pay not being</b></p> <p>10 <b>correct.</b></p> <p>11 Q. So it looks like there had been some</p> <p>12 adjustments, some gross-ups, that were supposed to have</p> <p>13 been included but for some reason didn't get on the</p> <p>14 check. Is that what you understand happened?</p> <p>15 MR. STUKENBERG: Objection. He already</p> <p>16 testified he doesn't know what's going on in this email.</p> <p>17 If you just want to say what the email says, we can all</p> <p>18 read the email.</p> <p>19 A. <b>That's the way I understand it, that guys</b></p> <p>20 <b>should have gotten something and didn't receive it.</b></p> <p>21 <b>Beyond that, I don't know.</b></p> <p>22 Q. Okay. And so you and Missy started working on</p> <p>23 getting that fixed, right?</p> <p>24 A. <b>That's --</b></p> <p>25 MR. LOMBARDINO: Vague and ambiguous. I</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. And from what I understand you testified</p> <p>2 earlier, is that at least for the gross-ups, you're</p> <p>3 going to have to enter those in manually, correct?</p> <p>4 A. <b>That is correct.</b></p> <p>5 Q. And it would have been based on a calculation</p> <p>6 that you would have done basically by hand?</p> <p>7 A. <b>Effectively.</b></p> <p>8 Q. And so can you say one way or another whether</p> <p>9 or not you were 100 percent perfect every single time</p> <p>10 getting the correct gross amount or not?</p> <p>11 A. <b>I was not 100 percent perfect.</b></p> <p>12 Q. Right. You're a normal human being that makes</p> <p>13 mistakes from time to time, correct?</p> <p>14 A. <b>Yes, sir.</b></p> <p>15 Q. I can just tell from talking to you, though,</p> <p>16 that you do your best to do your job correctly. Would</p> <p>17 you agree with that?</p> <p>18 A. <b>I try to do my best.</b></p> <p>19 Q. You also -- it sounds like there's also a</p> <p>20 system in place to verify that the amounts that you were</p> <p>21 putting in were correct. In other words, there was</p> <p>22 other people reviewing your work, correct?</p> <p>23 A. <b>There was supposed to be.</b></p> <p>24 Q. So if you were to make a mistake, for it to go</p> <p>25 through to payroll, it would have to get past other</p>

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<p style="text-align: right;">Page 114</p> <p>1 people?</p> <p>2     <b>A.    Yes, sir.</b></p> <p>3     Q.    If they were doing their job?</p> <p>4     <b>A.    That would be an accurate assumption.</b></p> <p>5     Q.    Right.</p> <p>6           MR. STUKENBERG: What exhibit were you</p> <p>7 just on, Dave?</p> <p>8           MR. MOULTON: It may have been 204. I'm</p> <p>9 not sure.</p> <p>10    Q.    Mr. Kinsey, I want to talk with you about</p> <p>11 Exhibit 218.</p> <p>12    <b>A.    Okay.</b></p> <p>13    Q.    Can you tell us what's going on in this</p> <p>14 Exhibit 218.</p> <p>15    <b>A.    It looks like I didn't enter time in correctly</b></p> <p>16 <b>and had to go back and fix it.</b></p> <p>17    Q.    And it looks like you had been out late and</p> <p>18 just made a mistake?</p> <p>19    <b>A.    Considering that was my anniversary, I think I</b></p> <p>20 <b>had -- was probably the first day off I had taken in</b></p> <p>21 <b>months.</b></p> <p>22    Q.    Okay. Were you still on island?</p> <p>23    <b>A.    Yes.</b></p> <p>24    Q.    Okay. You're aware of the no alcohol policy</p> <p>25 on the island?</p>	<p style="text-align: right;">Page 116</p> <p>1 showing you right now, it corresponds to the thousand</p> <p>2 dollar rate for a journeyman lineman, right?</p> <p>3     <b>A.    Okay.</b></p> <p>4     Q.    So back at the pay stub, we can see with 208</p> <p>5 hours reflected on the pay stub, that would correspond</p> <p>6 with 13 days work, correct?</p> <p>7     <b>A.    Sure.</b></p> <p>8     Q.    And that 13 days work, you get \$13,000 at that</p> <p>9 rate when you get your gross-up, right?</p> <p>10    <b>A.    It would have been that ballpark, yes, sir.</b></p> <p>11    Q.    And these gross-ups, you would have calculated</p> <p>12 it like that. You would have taken the \$13,000 minus</p> <p>13 what this hourly and overtime was, right?</p> <p>14           MR. LOMBARDINO: Objection, asked and</p> <p>15 answered on prior exhibits.</p> <p>16    <b>A.    Yes, that's what I would have done.</b></p> <p>17    Q.    Okay. So at this \$47.30 rate, the 13 days, we</p> <p>18 know the gross-up is \$134.40, right?</p> <p>19    <b>A.    Okay.</b></p> <p>20    Q.    And we have an identical pay stub for</p> <p>21 Mr. Bunch for a different pay period, June 25th to July</p> <p>22 8th, where again we see 13 days, \$13,000. The gross-up</p> <p>23 is \$134.40. Do you see that?</p> <p>24    <b>A.    Yes, sir.</b></p> <p>25    Q.    So \$134.40 is the right gross-up for a person</p>
<p style="text-align: right;">Page 115</p> <p>1     <b>A.    That is correct.</b></p> <p>2     Q.    Is that a policy that you abided by</p> <p>3 100 percent?</p> <p>4     <b>A.    100 percent.</b></p> <p>5     Q.    So even on an anniversary, you didn't drink?</p> <p>6     <b>A.    I don't drink, period.</b></p> <p>7     Q.    Oh, okay. Good for you. Neither do I.</p> <p>8           So for any mistakes that may have been in</p> <p>9 payroll would have just been normal mistakes. It</p> <p>10 wouldn't have been compounded by, say, alcohol?</p> <p>11    <b>A.    That is correct.</b></p> <p>12    Q.    And it's safe to say you're not a drug user?</p> <p>13    <b>A.    That is correct.</b></p> <p>14    Q.    So we're not talking about a situation where</p> <p>15 there could have been massive errors in the payroll</p> <p>16 based on someone who was drinking too much or doing</p> <p>17 drugs?</p> <p>18    <b>A.    Correct.</b></p> <p>19    Q.    Okay. Let's look at Exhibit 219. So in</p> <p>20 Exhibit 219, on the first page we have an earnings</p> <p>21 statement for Dakota Bunch for the pay period July 9th</p> <p>22 to July 22nd. Do you see that?</p> <p>23    <b>A.    Yes, sir.</b></p> <p>24    Q.    And on this one we can see we have this \$47.30</p> <p>25 rate, which, according to trusty Exhibit 151 which I'm</p>	<p style="text-align: right;">Page 117</p> <p>1 who is at this \$47.30 per hour rate when they work</p> <p>2 13 days, correct?</p> <p>3     <b>A.    That appears to be accurate.</b></p> <p>4     Q.    Dakota's pay stubs go on -- timesheets go on</p> <p>5 forever.</p> <p>6           The next one for Justin Norman, we're looking</p> <p>7 in this same exhibit which is Exhibit 219. We're going</p> <p>8 to Bates number Mammoth 7941 where we have an earnings</p> <p>9 statement for Justin Norman for the pay period April</p> <p>10 30th to May 13th. Do you see this one?</p> <p>11    <b>A.    Yes, sir.</b></p> <p>12    Q.    Okay. So this \$47.30 rate corresponds to that</p> <p>13 rate we just saw in Exhibit 151, correct? It comes out</p> <p>14 to \$1,000 a day -- is the expected pay, right?</p> <p>15    <b>A.    That would be, yes.</b></p> <p>16    Q.    As you can see on this pay stub for Justin</p> <p>17 Norman back in Exhibit 219, he only got paid \$946. I</p> <p>18 was wondering if you could explain that.</p> <p>19    <b>A.    Yeah. I missed it.</b></p> <p>20    Q.    Okay. Do you know why you would have put the</p> <p>21 hours in as eight regular and eight overtime for 16</p> <p>22 instead of just putting 16?</p> <p>23    <b>A.    No. I mean, I would have -- should have just</b></p> <p>24 <b>put 16 in.</b></p> <p>25    Q.    So this is an example of a pay stub that</p>

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<p style="text-align: right;">Page 118</p> <p>1 appears, in your opinion, to have a mistake on it?</p> <p>2     <b>A. Yes, sir.</b></p> <p>3             MR. LOMBARDINO: Objection, calls for</p> <p>4 speculation.</p> <p>5     Q. This is not the way that you were -- that you</p> <p>6 thought you were supposed to do it?</p> <p>7     <b>A. I would say yes. I mean, he didn't receive</b></p> <p>8 <b>the expected compensation.</b></p> <p>9     Q. And it wasn't entered exactly right either,</p> <p>10 because it should have just been 16, right?</p> <p>11     <b>A. That could just be a Paycom -- where Paycom</b></p> <p>12 <b>automatically adjusted it to eight hours of overtime and</b></p> <p>13 <b>eight hours of regular over a single day.</b></p> <p>14     Q. Okay.</p> <p>15             MR. STUKENBERG: What exhibit is that,</p> <p>16 Dave?</p> <p>17             MR. MOULTON: It's one I compiled for</p> <p>18 today. It's Exhibit 219.</p> <p>19     Q. And, Mr. Kinsey, we're going to go -- if we</p> <p>20 just jump down real quick, a few pages down to like,</p> <p>21 say, Mammoth 7944 on this exhibit. And I'm going to</p> <p>22 zoom in for you. I know you're looking close.</p> <p>23     <b>A. Yeah, it's super blurry.</b></p> <p>24     Q. Oh, is it?</p> <p>25     <b>A. Yeah.</b></p>	<p style="text-align: right;">Page 120</p> <p>1 30th to May 13th. Do you see that?</p> <p>2     <b>A. Yeah, 4/30 to 5/13.</b></p> <p>3     Q. Yeah. We were actually looking in the wrong</p> <p>4 section. Let's try that again.</p> <p>5             So April 30th to May 13th, if you look down</p> <p>6 here, you see that it is just the one day, right?</p> <p>7     <b>A. Yes, sir. So at that point -- I'm</b></p> <p>8 <b>speculating, but I'm assuming Paycom just corrected it</b></p> <p>9 <b>to eight hours of regular and eight hours of overtime</b></p> <p>10 <b>for that day, but that's a Paycom thing.</b></p> <p>11     Q. Okay. Now, if we look in his pay period for</p> <p>12 April 16th to April 29th inside of Exhibit 219, which is</p> <p>13 Mammoth 7942 -- if we look here, this is just like the</p> <p>14 pay stubs we saw for Dakota Johnson. Was it Johnson?</p> <p>15 Dakota Bunch.</p> <p>16             Dakota Bunch, Exhibit 219, first page, Mammoth</p> <p>17 4774, when you have a guy at this level, at \$47.30 at</p> <p>18 13 days, the gross-up is supposed to be \$134.40. We</p> <p>19 established that. Do you recall that?</p> <p>20     <b>A. That's what we talked about, yes, sir.</b></p> <p>21     Q. So let's -- I just want to show you what we</p> <p>22 have down here for the next guy, Justin Norman. So on</p> <p>23 Justin Norman -- and we're now on Mammoth 7942 in</p> <p>24 Exhibit 219. It's basically the same thing. It's</p> <p>25 \$47.30. It's 208 in just 13 days, right?</p>
<p style="text-align: right;">Page 119</p> <p>1     Q. If I scroll in more, let's see if you can see</p> <p>2 it better.</p> <p>3     <b>A. Yeah, I can understand that now.</b></p> <p>4     Q. Okay. It looks like on Bates number 7944,</p> <p>5 that there is a portion of the pay where it is broken up</p> <p>6 into eights like you were talking about.</p> <p>7     <b>A. So on that particular day, there's only eight</b></p> <p>8 <b>hours entered, and there's a per diem entered which</b></p> <p>9 <b>means he was not on the island at that day.</b></p> <p>10     Q. Okay. Oh, I see. I see. So maybe that</p> <p>11 paycheck isn't wrong because it was -- he wasn't quite</p> <p>12 on the island yet.</p> <p>13     <b>A. Well, but that paycheck only showed eight</b></p> <p>14 <b>hours of regular and eight hours of overtime, and</b></p> <p>15 <b>according to this, there still should have been 64 hours</b></p> <p>16 <b>total, so I don't know what -- I can't speculate.</b></p> <p>17     Q. Okay.</p> <p>18     <b>A. But the only time an individual received a</b></p> <p>19 <b>per diem was if they were transitioning to the island.</b></p> <p>20 <b>That would have covered basically the cost of food,</b></p> <p>21 <b>because the housing would have been paid for during</b></p> <p>22 <b>orientation and travel.</b></p> <p>23     Q. And just to be clear, let's -- let's look at</p> <p>24 this again, because for the one we're talking about</p> <p>25 where he was paid \$946, this is the pay period April</p>	<p style="text-align: right;">Page 121</p> <p>1     <b>A. Uh-huh.</b></p> <p>2     Q. But his gross stub is \$134.34. Do you see</p> <p>3 that?</p> <p>4     <b>A. Yes, sir.</b></p> <p>5     Q. And so this is the -- this isn't quite right.</p> <p>6 It's supposed to be \$134.40, right?</p> <p>7     <b>A. It should have been close to that, yes.</b></p> <p>8     Q. Okay. Well, I mean, Justin Norman's at the</p> <p>9 exact same pay scale as Dakota Bunch, right?</p> <p>10     <b>A. Right. I would have thought that I would have</b></p> <p>11 <b>entered the same for Dakota as I would have Justin. I</b></p> <p>12 <b>don't have an explanation as to why I didn't.</b></p> <p>13     Q. Right. I mean, but, you know, look, you're</p> <p>14 typing them in manually and -- I mean, I don't know what</p> <p>15 you did, but it looks to me you could have easily typed</p> <p>16 in 34 again instead of putting in 40, because that</p> <p>17 number had a 34 in it, right?</p> <p>18             MR. LOMBARDINO: Objection, asked and</p> <p>19 answered, argumentative. He's already answered he</p> <p>20 didn't recall why the numbers are the way they are.</p> <p>21 Also, I think Dakota might be a female, not a male.</p> <p>22             MR. MOULTON: Okay.</p> <p>23     Q. Do you know, Mr. Kinsey? Do you remember</p> <p>24 Dakota?</p> <p>25     <b>A. I don't remember any female linemen.</b></p>

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<p style="text-align: right;">Page 122</p> <p>1 Q. Okay.</p> <p>2 A. The only females I remember working for us</p> <p>3 were located within our office. Pretty sure it was a</p> <p>4 gentleman.</p> <p>5 Q. Well, looking back at --</p> <p>6 MR. STUKENBERG: Hey, Dave. I've got that</p> <p>7 call at 2:00.</p> <p>8 MR. MOULTON: Oh, okay.</p> <p>9 MR. STUKENBERG: Shouldn't take more than</p> <p>10 about ten minutes.</p> <p>11 MR. MOULTON: All right. Well, hurry up.</p> <p>12 VIDEOGRAPHER: Off the record at 2:00 p.m.</p> <p>13 (Recess taken 2:00-2:32.)</p> <p>14 VIDEOGRAPHER: Back on the record at 2:32.</p> <p>15 Q. (BY MR. MOULTON) Mr. Kinsey, we're just about</p> <p>16 ready to finish up here. I just had a few more</p> <p>17 questions for you. I want to show you what's been</p> <p>18 marked as Plaintiff's Exhibit 220, and it's a short</p> <p>19 email here I want you to review.</p> <p>20 A. Okay.</p> <p>21 Q. Do you know who Gerry Morgan is?</p> <p>22 A. I don't remember. I was just sitting here</p> <p>23 thinking about that.</p> <p>24 Q. Well, were there some guys that came on the</p> <p>25 island through like a recruiter?</p>	<p style="text-align: right;">Page 124</p> <p>1 A. I don't remember his name. I just remember he</p> <p>2 was hired to help run things.</p> <p>3 Q. Okay.</p> <p>4 A. But no linemen.</p> <p>5 Q. Are you -- do you have any family members or</p> <p>6 close acquaintances that still work for any of the</p> <p>7 Mammoth entities or Cobra?</p> <p>8 A. No. By and large, everyone that I worked with</p> <p>9 at that time was terminated for various reasons.</p> <p>10 Q. Okay. Was Missy Davis terminated?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. When you say --</p> <p>13 A. Let me clarify that. The people that I worked</p> <p>14 with hand in hand in Puerto Rico, a lot of us were</p> <p>15 terminated.</p> <p>16 Q. Okay. Can you walk me through that list of</p> <p>17 the people you're thinking about.</p> <p>18 A. I mean, I know some folks like Jason -- I</p> <p>19 can't remember his -- Jason Russell. I know he was</p> <p>20 terminated. I know Ken Kinsey was terminated. I was</p> <p>21 terminated. I know Ken's assistant was terminated. I</p> <p>22 know there was a lot of people that were terminated</p> <p>23 during that transition from restoration to</p> <p>24 reconstruction.</p> <p>25 Q. Okay. Sir, have you provided truthful</p>
<p style="text-align: right;">Page 123</p> <p>1 A. No, not that I was aware of.</p> <p>2 Q. Okay. Do you know why Gerry is writing Missy</p> <p>3 and you about this new worker and he would get paid</p> <p>4 \$1,250, less his 10 percent?</p> <p>5 A. I'm speculating, but again, less than</p> <p>6 10 percent would have been just a joke, because I don't</p> <p>7 have any recollection of anybody being compensated for</p> <p>8 recruiting. I really don't know. I mean, I know that</p> <p>9 in certain circumstances if we were looking for specific</p> <p>10 positions, someone might know a guy, and if we needed</p> <p>11 somebody, then they would recommend and then we would</p> <p>12 start trying to work on the process to get them hired so</p> <p>13 that we could get them down there. Beyond that, I</p> <p>14 don't -- I don't remember Randall Palmer or Gerry</p> <p>15 Morgan. The name sounds familiar, but I can't place</p> <p>16 them.</p> <p>17 Q. Okay. And my question, I guess, is a little</p> <p>18 more general. You're not aware of anyone working in</p> <p>19 Puerto Rico as a lineman that would have been paid less</p> <p>20 because Cobra would have been paying like a headhunter</p> <p>21 fee or a recruiter fee?</p> <p>22 A. Not that I'm aware of. The only person I'm</p> <p>23 aware of that was recruited was a senior VP of</p> <p>24 operations.</p> <p>25 Q. Okay. Who was that?</p>	<p style="text-align: right;">Page 125</p> <p>1 testimony today? Have you answered all my questions</p> <p>2 truthfully?</p> <p>3 A. I have, yes, sir.</p> <p>4 Q. Sitting here today, is there -- and thinking</p> <p>5 about your testimony today, are you aware of any</p> <p>6 corrections or anything that you feel that you would</p> <p>7 need to add for your record to be complete at this time?</p> <p>8 A. At this time, I believe I've answered</p> <p>9 everything as truthfully as I can remember.</p> <p>10 MR. MOULTON: I appreciate your time</p> <p>11 today, sir. We very much appreciate you being willing</p> <p>12 to come in and testify. We know it's not an easy</p> <p>13 experience, and we're grateful for your time in doing</p> <p>14 this. So with that, we'll go ahead and pass the</p> <p>15 witness. I'm assuming Will and/or Michael may have some</p> <p>16 questions for you.</p> <p>17 MR. STUKENBERG: Michael, do you want to</p> <p>18 go first?</p> <p>19 MR. LOMBARDINO: Sure.</p> <p>20 EXAMINATION</p> <p>21 BY MR. LOMBARDINO:</p> <p>22 Q. I have a few questions. I won't be near as</p> <p>23 long as Mr. David, but I do want to ask you a few</p> <p>24 questions to make sure your testimony is clear.</p> <p>25 In your view as the payroll manager, were they</p>



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<p style="text-align: right;">Page 126</p> <p>1 paid a strict day rate or were they paid an hourly rate 2 plus overtime?</p> <p>3 MR. MOULTON: Objection, form.</p> <p>4 A. The way I understood it was an hourly rate 5 plus overtime.</p> <p>6 Q. If they were paid a day rate, would there have 7 been cents on their paycheck or just dollars?</p> <p>8 MR. MOULTON: Objection, form.</p> <p>9 A. It would have been just dollars. There would 10 have been no need for hourlies.</p> <p>11 Q. Now, as the payroll manager, were you the 12 highest person in the company who dealt with personnel 13 issues -- I'll withdraw that question.</p> <p>14 Were the highest person in the company that 15 dealt with payroll -- with personnel issues, or were 16 there people above you?</p> <p>17 A. There was people above me.</p> <p>18 Q. And when you were entering hours into the 19 system, once you were finished entering hours, you don't 20 know what happened to the data after you finished 21 entering the hours, right?</p> <p>22 MR. MOULTON: Objection, form.</p> <p>23 A. Correct.</p> <p>24 Q. So you had no control over what the amount was 25 on the actual paycheck?</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Mr. Kinsey, you indicated that the vernacular 2 you-all would use in Puerto Rico was day rate as 3 shorthand; is that accurate?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And so you would call it a day rate in lieu of 6 using a phrase like daily expected compensation based on 7 a 16-hour day paid hourly with OT, or something to that 8 effect?</p> <p>9 MR. MOULTON: Objection, form.</p> <p>10 A. Yes, sir.</p> <p>11 Q. But when you said day rate, what did you 12 actually mean?</p> <p>13 MR. MOULTON: Objection, form.</p> <p>14 A. I mean, when we talked about day rate, that 15 was -- it was what the guys expected to get paid for 16 their day of work. I mean, it was -- everybody in the 17 office knew that we were -- that the linemen were 18 getting paid an hourly rate. It was just how the 19 conversation started, was day rate, and we just carried 20 on with that.</p> <p>21 Q. Okay. And when you used the phrase day rate, 22 would you describe what the actual pay practice was that 23 you were referring to.</p> <p>24 A. No. It was just -- that was just the phrase 25 we used.</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. MOULTON: Form and leading.</p> <p>2 Q. Did you have control over the amount of the 3 actual paycheck?</p> <p>4 MR. MOULTON: Form and leading.</p> <p>5 MR. LOMBARDINO: That's not leading.</p> <p>6 A. Once I entered the hourly rate or the 7 adjustments, after that, I had no control over it.</p> <p>8 Q. In your view, what would have happened if the 9 workers were not getting paid what they were hoping to 10 be paid?</p> <p>11 MR. MOULTON: Objection, form.</p> <p>12 A. From what guys told me, if they didn't get 13 paid what they were expecting, then they were going to 14 quit.</p> <p>15 MR. LOMBARDINO: What was your form 16 objection?</p> <p>17 MR. MOULTON: He's already answered that 18 question and also calls for speculation. And I'm not 19 going to explain objections. We're just going to go on.</p> <p>20 MR. LOMBARDINO: Okay. If those were your 21 only two objections, then I won't ask it again.</p> <p>22 I think that's all the questions I have 23 for you at the moment. I'm going to pass the witness.</p> <p>24 EXAMINATION</p> <p>25 BY MR. STUKENBERG:</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. No, but can you explain to me what the pay 2 practice you were referring to was when you used the 3 phrase day rate.</p> <p>4 A. Oh, I understand. When we would talk about 5 day rate, we would talk about the 16 hours per day, the 6 total compensation. So if an individual was supposed to 7 receive \$1,000 per day, that was what they expected. 8 Then we would enter 16 hours per day and then make 9 whatever adjustments we needed to, to make sure they 10 were correctly compensated.</p> <p>11 Q. Okay. So you were referring to the 16 hours a 12 day with hourly pay plus overtime?</p> <p>13 A. Yes, sir.</p> <p>14 MR. MOULTON: Objection, form.</p> <p>15 Q. I'm sorry. I didn't hear your answer.</p> <p>16 A. Yes, sir.</p> <p>17 MR. MOULTON: Same objection.</p> <p>18 Q. If you'd wait just a second before you answer 19 so Mr. Moulton can get his objection in, then we can 20 hear your answer.</p> <p>21 Can you repeat your answer, please.</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. We saw a lot of emails about 24 adjustments and changes in compensation. Were there a 25 lot of communications about adjustments to compensation</p>

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<p style="text-align: right;">Page 130</p> <p>1 other than the gross-ups that we've discussed today?</p> <p>2 <b>A. Not that I'm aware of.</b></p> <p>3 Q. Okay. You don't recall instances where like</p> <p>4 somebody was entered at the wrong position so their</p> <p>5 hourly rate was off, things like that?</p> <p>6 <b>A. That did happen, yes, sir.</b></p> <p>7 Q. Okay. And you would make adjustments when</p> <p>8 that occurred?</p> <p>9 <b>A. Yes, sir. So, for instance, if somebody was a</b></p> <p>10 <b>journeyman lineman in the system but they were supposed</b></p> <p>11 <b>to be a foreman, obviously two different pay rates, and</b></p> <p>12 <b>so I would have to go in and make sure that that pay</b></p> <p>13 <b>rate was corrected so they would receive their correct</b></p> <p>14 <b>pay.</b></p> <p>15 Q. And we've seen some of that in the exhibits</p> <p>16 reviewed today?</p> <p>17 <b>A. I don't know that we saw that specific</b></p> <p>18 <b>example.</b></p> <p>19 Q. Okay. Prior to working for Cobra, did you</p> <p>20 have any payroll experience?</p> <p>21 <b>A. I did not.</b></p> <p>22 Q. Did you have any experience with compliance</p> <p>23 with the Fair Labor Standards Act?</p> <p>24 <b>A. I did not.</b></p> <p>25 Q. Did you view it as your role to be responsible</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. And you were similarly instructed not to enter</p> <p>2 day rates with flat amounts of pay for non-exempt</p> <p>3 employees?</p> <p>4 <b>A. Per the --</b></p> <p>5 MR. MOULTON: Objection, form.</p> <p>6 <b>A. Some of the emails that we looked at earlier,</b></p> <p>7 <b>that's what I was instructed.</b></p> <p>8 Q. Now, for exempt employees, it's my</p> <p>9 understanding that they received their base salary plus</p> <p>10 an amount per day?</p> <p>11 <b>A. That is correct.</b></p> <p>12 Q. And then the non-exempts received hourly with</p> <p>13 overtime?</p> <p>14 MR. MOULTON: Objection, form.</p> <p>15 <b>A. Yes, sir.</b></p> <p>16 Q. And so if the non-exempts were being paid a</p> <p>17 day rate, you could have just keyed in a day rate in the</p> <p>18 same way that you did for the exempt employees, correct?</p> <p>19 <b>A. That is correct.</b></p> <p>20 Q. And you were instructed not to do that but</p> <p>21 rather to enter hours so it would generate an hourly</p> <p>22 with overtime pay structure?</p> <p>23 <b>A. Yes, sir.</b></p> <p>24 Q. We heard some testimony earlier today about</p> <p>25 gross-ups or day rate adjustments. Do you recall that?</p>
<p style="text-align: right;">Page 131</p> <p>1 for compliance with the Fair Labor Standards Act?</p> <p>2 <b>A. I did my best, but I trusted that my</b></p> <p>3 <b>supervisors were going to hold me accountable.</b></p> <p>4 Q. Is it your understanding that Mr. Beagle was</p> <p>5 the one that created the pay practice at issue here?</p> <p>6 <b>A. I was not aware who created it.</b></p> <p>7 Q. Okay. But people above you within the human</p> <p>8 resources department created the pay practice at issue?</p> <p>9 <b>A. From what I understood, yes. I knew Jeff was</b></p> <p>10 <b>the HR director for Mammoth, and I was under the</b></p> <p>11 <b>impression that he, amongst others, were responsible for</b></p> <p>12 <b>the pay structure.</b></p> <p>13 Q. Okay. You were an execution person, not a</p> <p>14 policy formulation person; is that fair?</p> <p>15 MR. MOULTON: Objection, form.</p> <p>16 <b>A. That is correct.</b></p> <p>17 Q. Okay. Did you have prior experience with</p> <p>18 Paycom before joining the organization?</p> <p>19 <b>A. I did not.</b></p> <p>20 Q. So you don't consider yourself like a Paycom</p> <p>21 expert or anything?</p> <p>22 <b>A. No, sir.</b></p> <p>23 Q. Okay. You were instructed to enter hourly and</p> <p>24 overtime for the non-exempt employees; is that accurate?</p> <p>25 <b>A. That would be correct.</b></p>	<p style="text-align: right;">Page 133</p> <p>1 <b>A. We've talked a lot about that.</b></p> <p>2 Q. Okay. Do you want to refer to that as a</p> <p>3 gross-up? Is that a fair term to use? I've seen that</p> <p>4 in some of the emails.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Are you comfortable with that term?</p> <p>7 <b>A. Yes, sir.</b></p> <p>8 Q. I heard you say earlier that for changes to</p> <p>9 compensation -- again, you were not the one setting</p> <p>10 policy, correct?</p> <p>11 MR. MOULTON: Objection, form.</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. And I believe you testified earlier that you</p> <p>14 had to get approval for modifications for the</p> <p>15 compensation practice, right?</p> <p>16 <b>A. In the beginning, yes, I had to go through</b></p> <p>17 <b>someone in Oklahoma to get changes made.</b></p> <p>18 Q. Okay. So for gross-ups, you would need to get</p> <p>19 approval for that?</p> <p>20 <b>A. In the beginning I would send those to</b></p> <p>21 <b>Oklahoma, and they would approve it, deny it, correct</b></p> <p>22 <b>it.</b></p> <p>23 Q. Okay. And so you would get feedback from</p> <p>24 people in Oklahoma or others to make modifications to</p> <p>25 the gross-ups?</p>

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<p style="text-align: right;">Page 134</p> <p>1 A. I didn't typically receive feedback. They</p> <p>2 would just do it and move on.</p> <p>3 Q. So they would actually make the changes</p> <p>4 themselves?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Got it.</p> <p>7 A. At least as much as I'm aware, yes.</p> <p>8 Q. Okay. And so they would change it, delete it,</p> <p>9 add it, whatever they wanted to do. You weren't privy</p> <p>10 to that?</p> <p>11 MR. MOULTON: Objection, form.</p> <p>12 A. That's correct.</p> <p>13 Q. Is it also correct that you don't know the</p> <p>14 reasons why these other parties made these adjustments?</p> <p>15 A. Any adjustments made after I sent it off, I</p> <p>16 have no clue what the reasons were.</p> <p>17 Q. Okay. You can't say definitively one way or</p> <p>18 the other whether you were ever instructed not to pay</p> <p>19 somebody a gross-up?</p> <p>20 A. I would agree to that.</p> <p>21 Q. You just don't remember either way?</p> <p>22 A. I don't recall anybody telling me not to.</p> <p>23 Q. Okay. So it's plausible that happened and you</p> <p>24 just don't remember?</p> <p>25 A. It's possible.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. I don't know that for certain.</p> <p>2 Q. So it's plausible that somebody could have</p> <p>3 made a modification on the time entry report and it</p> <p>4 would still reflect you as the approver?</p> <p>5 MR. MOULTON: Objection, form.</p> <p>6 A. It's possible. I don't know enough about the</p> <p>7 system to know what particulars.</p> <p>8 Q. Okay. So when you testified earlier today</p> <p>9 that you showing as the reviewer means nobody else ever</p> <p>10 made a modification, you don't know if that's true or</p> <p>11 not?</p> <p>12 A. I felt that it was true, but I can't say with</p> <p>13 certainty.</p> <p>14 Q. Okay. And you tracked -- you were responsible</p> <p>15 for tracking this payroll data, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. But other people could access and make</p> <p>18 modifications to it, right?</p> <p>19 MR. MOULTON: Objection, form.</p> <p>20 A. That is correct.</p> <p>21 Q. And we saw some emails earlier today where</p> <p>22 Missy Davis or Alex Kalman or different individuals were</p> <p>23 actually making modifications --</p> <p>24 MR. MOULTON: Objection, form.</p> <p>25 Q. -- to compensation. Do you recall that?</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Once you entered information on Paycom, other</p> <p>2 people would review it, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And they would make changes to it?</p> <p>5 MR. MOULTON: Objection, form.</p> <p>6 Q. They could make changes to it?</p> <p>7 MR. MOULTON: Objection, form.</p> <p>8 A. They could.</p> <p>9 Q. Do you recall instances where that happened?</p> <p>10 A. I do not recall any.</p> <p>11 Q. Okay. But there were multiple people that had</p> <p>12 authority and access to make those edits or revisions?</p> <p>13 MR. MOULTON: Objection, form.</p> <p>14 A. That is correct.</p> <p>15 Q. And within the Paycom time tracker system, how</p> <p>16 knowledgeable are you of that system?</p> <p>17 MR. MOULTON: Objection, form.</p> <p>18 A. Novice level.</p> <p>19 Q. Novice level.</p> <p>20 So earlier I think you testified that if a</p> <p>21 modification were made, it would be reflected in the</p> <p>22 reviewer column.</p> <p>23 You don't actually know that to be accurate</p> <p>24 one way or the other, do you?</p> <p>25 MR. MOULTON: Objection, form.</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Yes, sir.</p> <p>2 Q. You're aware that there were instances where</p> <p>3 somebody worked a short workweek but did not receive a</p> <p>4 gross-up. You're aware that happened?</p> <p>5 A. I know that there were times I missed making</p> <p>6 gross adjustments.</p> <p>7 Q. Okay. And are you aware that there are times</p> <p>8 where individuals did not receive a gross-up that was</p> <p>9 not the result of your making an error? Do you know one</p> <p>10 way or the other?</p> <p>11 A. I don't.</p> <p>12 Q. Okay. So if we see a pay stub where somebody</p> <p>13 worked a short week and there was no gross-up, you can't</p> <p>14 say one way or the other whether that was a mistake that</p> <p>15 you made or perhaps an adjustment that somebody else</p> <p>16 made?</p> <p>17 MR. MOULTON: Objection, form.</p> <p>18 A. I couldn't say one way or another. I mean --</p> <p>19 Q. You don't --</p> <p>20 A. We looked at an example earlier where there</p> <p>21 was no adjustment, and I don't know why.</p> <p>22 Q. Okay. So you don't know if that was a mistake</p> <p>23 or somebody intentionally didn't pay the gross-up and</p> <p>24 made that decision. You don't know either way?</p> <p>25 MR. MOULTON: Objection, form.</p>

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<p style="text-align: right;">Page 138</p> <p>1       <b>A.    That's correct.</b></p> <p>2       <b>Q.    And is that true of any given pay stub where</b></p> <p>3 <b>somebody worked a short week and did not receive a</b></p> <p>4 <b>gross-up, you can't say why that didn't happen?</b></p> <p>5               <b>MR. MOULTON:  Objection, form.</b></p> <p>6       <b>A.    I would agree.  I mean, I don't know.</b></p> <p>7       <b>Q.    There's no way to tell just from the pay stub?</b></p> <p>8       <b>A.    Correct.</b></p> <p>9       <b>Q.    So you would gather information and assemble a</b></p> <p>10 <b>spreadsheet for those who had a short workweek and would</b></p> <p>11 <b>be eligible for gross-up, correct?</b></p> <p>12               <b>MR. MOULTON:  Objection, form.</b></p> <p>13       <b>A.    In a manner, yes.</b></p> <p>14       <b>Q.    And then once you assembled that information,</b></p> <p>15 <b>you would share it with other people within the</b></p> <p>16 <b>organization?</b></p> <p>17       <b>A.    In a manner, yes.</b></p> <p>18       <b>Q.    And then would other people have authority to</b></p> <p>19 <b>make changes to the information, the data you would</b></p> <p>20 <b>gather?</b></p> <p>21               <b>MR. MOULTON:  Objection, form.</b></p> <p>22       <b>A.    Yes, sir.</b></p> <p>23       <b>Q.    And so somebody like, for instance, Jeff</b></p> <p>24 <b>Beagle could elect not to pay a gross-up if he so chose?</b></p> <p>25               <b>MR. MOULTON:  Objection, form.</b></p>	<p style="text-align: right;">Page 140</p> <p>1               <b>MR. STUKENBERG:  Dave, if you can help me</b></p> <p>2 <b>out, because I want to get the question correct.</b></p> <p>3       <b>Q.    When I say access or authority, what I'm</b></p> <p>4 <b>trying to get at is, they actually had the credentials</b></p> <p>5 <b>to log into Paycom and make these changes.  That's the</b></p> <p>6 <b>question I'm asking.  Is that accurate?</b></p> <p>7               <b>MR. MOULTON:  Objection, form.</b></p> <p>8       <b>A.    There were many people, including Jeff Beagle,</b></p> <p>9 <b>Ken Kinsey, Keith Ellison, Alex Kalman, that had the</b></p> <p>10 <b>credentials to log into Paycom and make whatever changes</b></p> <p>11 <b>to the system that they wanted to.</b></p> <p>12       <b>Q.    And they could do that after you had gathered</b></p> <p>13 <b>the data and input?</b></p> <p>14               <b>MR. MOULTON:  Objection, form.</b></p> <p>15       <b>A.    They could do it whenever they wanted to.</b></p> <p>16       <b>Q.    Okay.  I know you testified earlier that there</b></p> <p>17 <b>were occasions where mistakes could have happened in</b></p> <p>18 <b>payroll, correct?</b></p> <p>19       <b>A.    Yes.</b></p> <p>20       <b>Q.    But there were also a lot of checks and</b></p> <p>21 <b>balances to make sure payroll was accurate, correct?</b></p> <p>22       <b>A.    Yes.</b></p> <p>23       <b>Q.    I mean, there were multiple people reviewing</b></p> <p>24 <b>each payroll cycle to verify that it was correct?</b></p> <p>25       <b>A.    Yes.</b></p>
<p style="text-align: right;">Page 139</p> <p>1       <b>A.    He had the authority to do that.</b></p> <p>2       <b>Q.    Okay.  So let's just kind of go through a</b></p> <p>3 <b>list.  There's Jeff Beagle, Alexander -- Alex Kalman,</b></p> <p>4 <b>Ken Kinsey, Keith Ellison.  If any of those people made</b></p> <p>5 <b>a decision not to pay a gross-up, you wouldn't have paid</b></p> <p>6 <b>it, right?</b></p> <p>7               <b>MR. MOULTON:  Objection, form.</b></p> <p>8       <b>A.    If they had told me not to pay someone, then I</b></p> <p>9 <b>wouldn't have paid them.</b></p> <p>10       <b>Q.    And they all had authority to make that call</b></p> <p>11 <b>one way or the other?</b></p> <p>12               <b>MR. MOULTON:  Objection, form.</b></p> <p>13       <b>A.    From what I understand, yes.</b></p> <p>14       <b>Q.    It wasn't your call to make?</b></p> <p>15       <b>A.    Correct.</b></p> <p>16       <b>Q.    It was -- somebody higher up was making those</b></p> <p>17 <b>decisions?</b></p> <p>18       <b>A.    Yes.</b></p> <p>19       <b>Q.    Okay.  And again, there were other people that</b></p> <p>20 <b>could have made those modifications in Paycom, had that</b></p> <p>21 <b>authority to do so?</b></p> <p>22               <b>MR. MOULTON:  Objection, form.</b></p> <p>23       <b>A.    Yes, sir.</b></p> <p>24       <b>Q.    Okay.  And had access.  I know Dave keeps</b></p> <p>25 <b>objecting, so just --</b></p>	<p style="text-align: right;">Page 141</p> <p>1       <b>Q.    So is it fair to say that the payroll was more</b></p> <p>2 <b>than likely accurate?</b></p> <p>3       <b>A.    It was as accurate as I could make it.</b></p> <p>4       <b>Q.    Okay.  Coupled with everybody else involved</b></p> <p>5 <b>reviewing and verifying its accuracy, correct?</b></p> <p>6       <b>A.    Yes.  And we did our absolute best so that</b></p> <p>7 <b>come payday, guys got paid correctly.  Pissed off</b></p> <p>8 <b>employees don't make for good employees.</b></p> <p>9       <b>Q.    Right.  And presumably if somebody was --</b></p> <p>10 <b>strike that.</b></p> <p>11               <b>MR. STUKENBERG:  Let's pull up -- Anthony,</b></p> <p>12 <b>if you can pull up -- well, Dave, this is actually your</b></p> <p>13 <b>exhibit.</b></p> <p>14               <b>MR. MOULTON:  Which one you want?</b></p> <p>15               <b>MR. STUKENBERG:  219.  And pull up 4796.</b></p> <p>16 <b>I wonder if I got the wrong exhibit.  I got Exhibit 19,</b></p> <p>17 <b>page 4796.</b></p> <p>18               <b>MR. MOULTON:  219, right?  I don't have a</b></p> <p>19 <b>19.</b></p> <p>20               <b>MR. STUKENBERG:  Yeah, yeah, 219.</b></p> <p>21               <b>MR. MOULTON:  And what page?</b></p> <p>22               <b>MR. STUKENBERG:  4796.  It's a document</b></p> <p>23 <b>you were asking about earlier today.</b></p> <p>24               <b>MR. MOULTON:  I don't see a 4796.</b></p> <p>25               <b>MR. LOMBARDINO:  Go back up.  You were at</b></p>

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<p style="text-align: right;">Page 142</p> <p>1 4795.</p> <p>2 MR. MOULTON: Yeah. I don't -- there's</p> <p>3 not one after it.</p> <p>4 MR. LOMBARDINO: You skipped pages in that</p> <p>5 exhibit?</p> <p>6 MR. MOULTON: This is just a compilation</p> <p>7 of various payroll --</p> <p>8 MR. STUKENBERG: What is the page at the</p> <p>9 bottom that's partial showing?</p> <p>10 MR. MOULTON: There's not a partial.</p> <p>11 Oh --</p> <p>12 MR. STUKENBERG: Norman Johnson --</p> <p>13 MR. MOULTON: Yeah, 7941.</p> <p>14 MR. STUKENBERG: 7941. Sorry. I read</p> <p>15 that 4796 because I was looking at the page before.</p> <p>16 Q. So this is Exhibit 219, page --</p> <p>17 MR. STUKENBERG: What was it? 7941?</p> <p>18 Q. So, Mr. Kinsey, this is an example where</p> <p>19 somebody worked a short week. Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. It looks like the person worked one day --</p> <p>22 A. Yes.</p> <p>23 Q. -- correct?</p> <p>24 And there's no gross-up paid on that day; is</p> <p>25 that accurate?</p>	<p style="text-align: right;">Page 144</p> <p>1 Mr. Ellison had any conversations with anybody else</p> <p>2 about your separation?</p> <p>3 A. I don't believe so, but I don't know.</p> <p>4 Q. And you don't know if there were reasons</p> <p>5 beyond what you were told for your termination?</p> <p>6 A. There could be reasons beyond that, but I have</p> <p>7 no clue.</p> <p>8 Q. Okay. And you were, we saw in some emails</p> <p>9 earlier today, counseled several times about not</p> <p>10 hard-coding in day rates for non-exempt employees,</p> <p>11 correct?</p> <p>12 A. That is what we saw in the emails.</p> <p>13 Q. And do you recall why you on occasion</p> <p>14 hard-coded day rate flat amounts for non-exempt</p> <p>15 employees? Was that just an error?</p> <p>16 A. I really don't know. I can't speak to why I</p> <p>17 did it.</p> <p>18 Q. Okay. Let's take a look at Mammoth 4855,</p> <p>19 which we'll go ahead and mark as --</p> <p>20 MR. STUKENBERG: I think we're on</p> <p>21 Exhibit 220?</p> <p>22 MR. MOULTON: 221, I think.</p> <p>23 MR. STUKENBERG: 221. We'll mark this</p> <p>24 221. It's Mammoth 4855.</p> <p>25 Q. You can see in this instance the person has a</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Per this pay stub, yes, sir.</p> <p>2 Q. And you have no idea why gross-up was not paid</p> <p>3 that workweek, correct?</p> <p>4 A. I don't know.</p> <p>5 Q. And it's plausible that somebody made the</p> <p>6 decision to not pay a gross-up in this instance?</p> <p>7 MR. MOULTON: Objection, form.</p> <p>8 A. It's possible.</p> <p>9 Q. You just don't know one way or the other?</p> <p>10 A. I do not.</p> <p>11 MR. STUKENBERG: Anthony, can you pull up</p> <p>12 4885.</p> <p>13 MR. ARTEAGA: Give me a second.</p> <p>14 MR. STUKENBERG: Sure.</p> <p>15 Q. While he's doing that, Mr. Kinsey, you were</p> <p>16 ultimately terminated for making what the company</p> <p>17 believed were payroll errors. That's what you were told</p> <p>18 anyway?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And do you know everyone that was involved in</p> <p>21 the decision to terminate your employment?</p> <p>22 A. I believe it was just Michelle Poling and</p> <p>23 Keith Ellison. If others were involved, I'm not aware</p> <p>24 of it.</p> <p>25 Q. Okay. And you don't know if Michelle or</p>	<p style="text-align: right;">Page 145</p> <p>1 regular rate of \$59.12. Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And this is actually the wrong document.</p> <p>4 Do you know what that hourly rate corresponds</p> <p>5 to from a target compensation rate?</p> <p>6 A. I think it refers to the foreman level.</p> <p>7 Q. And their target compensation, I believe, was</p> <p>8 \$1,250 per day; is that right?</p> <p>9 A. That would -- I believe that's correct.</p> <p>10 MR. STUKENBERG: And, Anthony, would you</p> <p>11 scroll to page 31 of that document.</p> <p>12 Q. Looking at this pay stub, you can see that</p> <p>13 this person has a regular rate of \$59.12 and an overtime</p> <p>14 rate of -- what is that, \$88.68; is that right?</p> <p>15 A. It's really small and blurry. I can't say --</p> <p>16 yeah, that is correct.</p> <p>17 Q. And so this is -- Mr. Chappell would have been</p> <p>18 a foreman?</p> <p>19 A. I believe so.</p> <p>20 Q. And in this instance, he did not work a full</p> <p>21 two-week period; is that correct?</p> <p>22 A. That's what it looks like.</p> <p>23 Q. He worked 144 hours; is that right?</p> <p>24 A. That's what it looks like.</p> <p>25 Q. And then that generates total compensation of</p>

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<p style="text-align: right;">Page 146</p> <p>1 \$7,567.36; is that correct?</p> <p>2 <b>A. That's what the pay stub shows.</b></p> <p>3 <b>Q. And there's no gross-up or adjustment made in</b></p> <p>4 <b>this instance, correct?</b></p> <p>5 <b>A. Not on this earnings statement.</b></p> <p>6 <b>Q. And you don't have any idea why no</b></p> <p>7 <b>adjustment -- the company elected to not make an</b></p> <p>8 <b>adjustment in this instance?</b></p> <p>9 <b>A. Given the date of it, I'm pretty confident</b></p> <p>10 <b>that I made a mistake.</b></p> <p>11 <b>Q. Okay. But you don't know one way or the</b></p> <p>12 <b>other?</b></p> <p>13 <b>A. I do not know one way or the other.</b></p> <p>14 <b>Q. Okay. Let's go --</b></p> <p>15 <b>MR. LOMBARDINO: Real quick, Will.</b></p> <p>16 <b>MR. STUKENBERG: Yeah.</b></p> <p>17 <b>MR. LOMBARDINO: Do you want -- it's</b></p> <p>18 <b>unclear -- is this a different exhibit from the last</b></p> <p>19 <b>exhibit, or is this all the same exhibit, and do you</b></p> <p>20 <b>want to --</b></p> <p>21 <b>MR. STUKENBERG: We'll submit the whole</b></p> <p>22 <b>thing as being Exhibit 221.</b></p> <p>23 <b>MR. LOMBARDINO: Okay. For the record, do</b></p> <p>24 <b>you want to put the Bates number of the document you're</b></p> <p>25 <b>looking at on the screen right now? Because I don't</b></p>	<p style="text-align: right;">Page 148</p> <p>1 <b>A. From my understanding, correct.</b></p> <p>2 <b>Q. Do you know what \$1,250 times 14 is?</b></p> <p>3 <b>A. Off the top of my head, I think it's \$17,500.</b></p> <p>4 <b>Q. Okay. And so if he were being paid \$1,250 per</b></p> <p>5 <b>day, then his compensation should be \$17,500, right?</b></p> <p>6 <b>MR. MOULTON: Objection, form.</b></p> <p>7 <b>A. I believe so.</b></p> <p>8 <b>Q. But that's not what he was paid here, correct?</b></p> <p>9 <b>A. According to this earnings statement, that is</b></p> <p>10 <b>correct.</b></p> <p>11 <b>Q. Do you -- strike that.</b></p> <p>12 <b>Were you told that you needed to enter</b></p> <p>13 <b>16 hours in pay hourly with overtime because that's what</b></p> <p>14 <b>management and legal said you needed to do to be</b></p> <p>15 <b>compliant?</b></p> <p>16 <b>MR. MOULTON: Objection, form.</b></p> <p>17 <b>Q. Do you remember being told that at any point?</b></p> <p>18 <b>A. I do --</b></p> <p>19 <b>MR. MOULTON: Objection, form.</b></p> <p>20 <b>A. I do remember being told that, but I couldn't</b></p> <p>21 <b>tell you which individual specifically.</b></p> <p>22 <b>Q. But it was your understanding that you were</b></p> <p>23 <b>paying hourly with overtime in the manner that you were</b></p> <p>24 <b>because that's what was required to make the pay plan</b></p> <p>25 <b>legal?</b></p>
<p style="text-align: right;">Page 147</p> <p>1 think you mentioned the Bates number of this page.</p> <p>2 <b>MR. STUKENBERG: Yeah. It's -- what is</b></p> <p>3 <b>the Bates number there, 4885? Is that what it says?</b></p> <p>4 <b>MR. LOMBARDINO: Yeah. And it's dated --</b></p> <p>5 <b>earnings statement dated November 17th, 2017.</b></p> <p>6 <b>MR. STUKENBERG: Yeah.</b></p> <p>7 <b>Q. So if we go to the first page of Exhibit 221,</b></p> <p>8 <b>which is Bates number 4855 -- and if we can zoom in a</b></p> <p>9 <b>little to see it a little better. So scrolling up on</b></p> <p>10 <b>4855, back to where the compensation is, this is for the</b></p> <p>11 <b>pay date June 1st, 2018. Do you see that?</b></p> <p>12 <b>A. Yes, sir.</b></p> <p>13 <b>Q. And this is another pay stub for Mr. Chappell,</b></p> <p>14 <b>who we understand to be a foreman; is that accurate?</b></p> <p>15 <b>A. I believe so, yes, sir.</b></p> <p>16 <b>Q. And so in this instance, it appears as though</b></p> <p>17 <b>he worked all 14 days in this pay period for 16 hours a</b></p> <p>18 <b>day. Do you see that?</b></p> <p>19 <b>A. Yes, sir.</b></p> <p>20 <b>Q. And what's his total compensation?</b></p> <p>21 <b>A. It reads \$17,499.52.</b></p> <p>22 <b>Q. Okay. And if he were being paid a day rate,</b></p> <p>23 <b>wouldn't it be an even number? It wouldn't have this</b></p> <p>24 <b>52 cents, correct?</b></p> <p>25 <b>MR. MOULTON: Objection, form.</b></p>	<p style="text-align: right;">Page 149</p> <p>1 <b>MR. MOULTON: Objection, form.</b></p> <p>2 <b>MR. STUKENBERG: Dave, you've objected to</b></p> <p>3 <b>every question I've asked. At some point it's really</b></p> <p>4 <b>disruptive to the deposition. Not every question I ask</b></p> <p>5 <b>is objectionable, so if you have --</b></p> <p>6 <b>MR. MOULTON: It's based on his prior</b></p> <p>7 <b>testimony. Look, we're not going to argue about it. We</b></p> <p>8 <b>can deal with it in front of the court.</b></p> <p>9 <b>MR. STUKENBERG: I would -- Dave, if</b></p> <p>10 <b>you're going to object to every question I ask, I</b></p> <p>11 <b>seriously will take it up with the court because it's</b></p> <p>12 <b>disruptive to the questioning.</b></p> <p>13 <b>MR. MOULTON: I'm not trying to be</b></p> <p>14 <b>disruptive, and I don't think it is. I'm saying it in a</b></p> <p>15 <b>non-argumentative manner, just like the rules say. I</b></p> <p>16 <b>think there is an objection to that question. I don't</b></p> <p>17 <b>know what will be on the next one, but just continue.</b></p> <p>18 <b>MR. STUKENBERG: Can you read back my</b></p> <p>19 <b>question, please.</b></p> <p>20 <b>(Record read.)</b></p> <p>21 <b>A. That is the way that I understood that.</b></p> <p>22 <b>Q. Do you recall who told you that you needed to</b></p> <p>23 <b>pay the non-exempt employees hourly with overtime, as</b></p> <p>24 <b>well as gross-ups, in order to make it legal?</b></p> <p>25 <b>A. I do not remember.</b></p>



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<p style="text-align: right;">Page 150</p> <p>1 MR. MOULTON: Objection, form.</p> <p>2 Q. You don't remember who told you that?</p> <p>3 A. I do not.</p> <p>4 Q. Okay.</p> <p>5 A. There was a lot of people involved at that</p> <p>6 time.</p> <p>7 Q. Okay. And the people that were making the</p> <p>8 decisions regarding how the compensation would work were</p> <p>9 higher up in the organization than you were?</p> <p>10 MR. MOULTON: Objection, form.</p> <p>11 A. They were executive level individuals making</p> <p>12 that decision.</p> <p>13 Q. It was not within your scope of responsibility</p> <p>14 to establish the pay practice at issue here?</p> <p>15 A. Correct, I did not have that authority.</p> <p>16 Q. Did you ever have any conversations with</p> <p>17 linemen that their pay broke out hourly with overtime to</p> <p>18 get them to a target level of compensation?</p> <p>19 A. I remember having many of those conversations.</p> <p>20 Q. So you often explained to linemen that they</p> <p>21 were getting paid hourly with overtime to get to a</p> <p>22 target rate?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Was that something that was covered at the</p> <p>25 orientations you attended, do you recall?</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Sure. And you were on the -- what dates were</p> <p>2 you on the island again?</p> <p>3 A. I arrived in Puerto Rico October 31st of 2017,</p> <p>4 and with the exception of a few days throughout the</p> <p>5 year, I left in the beginning of August 2018.</p> <p>6 Q. So you were there -- did you say October 31st</p> <p>7 of '17?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Through at least July 23rd, 2018?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And that's the window of time that</p> <p>12 you're referring to where you attended orientations and</p> <p>13 advised the linemen that they would be paid hourly with</p> <p>14 overtime?</p> <p>15 A. Yes, sir.</p> <p>16 Q. When people would call and complain about</p> <p>17 their pay, did you explain to them that they were being</p> <p>18 paid hourly with overtime?</p> <p>19 A. Yes, sir, because they would want to know how</p> <p>20 their pay was calculated, and so --</p> <p>21 Q. Go ahead. I'm sorry.</p> <p>22 A. If their pay did not equal what they were</p> <p>23 expecting, then I would have to explain to them how to</p> <p>24 get there. And then majority of the time, once I</p> <p>25 explained the process, I didn't typically get a phone</p>
<p style="text-align: right;">Page 151</p> <p>1 A. The ones that I participated in, that was</p> <p>2 covered, because I knew that that was going to be a</p> <p>3 point of contention, and I wanted to try to head those</p> <p>4 phone calls off from the beginning.</p> <p>5 Q. Do you recall who spoke to that issue at the</p> <p>6 orientations?</p> <p>7 A. That would have been me.</p> <p>8 Q. Okay. And then every orientation you</p> <p>9 attended, you explained that this was going to be hourly</p> <p>10 with overtime to get to this target level of</p> <p>11 compensation?</p> <p>12 A. Yes, sir. From what I remember, we would</p> <p>13 provide offer letters to the individuals with their</p> <p>14 classifications, their pay rates, their benefits package</p> <p>15 that they would sign and agree to, and it was specified</p> <p>16 an hourly rate.</p> <p>17 Q. And so you would explain to them that they</p> <p>18 were going to get paid an hourly rate with overtime to</p> <p>19 get to this target level of daily compensation?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And I think you testified, correct me if I'm</p> <p>22 wrong, that you attended every orientation in</p> <p>23 Puerto Rico while you were on island?</p> <p>24 A. I believe I attended every one of them. I'm</p> <p>25 fairly confident of that, but don't make me swear to it.</p>	<p style="text-align: right;">Page 153</p> <p>1 call back unless they were missing pay, and then it was</p> <p>2 usually, hey, my paycheck's wrong, can you look into it,</p> <p>3 and then I would.</p> <p>4 Q. So when people would call and inquire about</p> <p>5 compensation, you would explain to them that they were</p> <p>6 being paid hourly plus overtime for 16 hours a day.</p> <p>7 A. Yes, sir.</p> <p>8 MR. STUKENBERG: Let's just take a second,</p> <p>9 Dave. I think I'm almost done. Check my notes.</p> <p>10 VIDEOGRAPHER: Are we going off the</p> <p>11 record?</p> <p>12 MR. STUKENBERG: Yeah, let's go off the</p> <p>13 record, but not a long break. Couple of minutes.</p> <p>14 VIDEOGRAPHER: Off the record at 3:16.</p> <p>15 (Recess taken 3:16-3:22.)</p> <p>16 VIDEOGRAPHER: Back on the record at 3:22.</p> <p>17 Q. (BY MR. STUKENBERG) Mr. Kinsey, nothing in</p> <p>18 the offer letters that were distributed to the linemen</p> <p>19 or mechanics said that they were guaranteed a gross-up</p> <p>20 in a (audio distortion), for example?</p> <p>21 THE REPORTER: Could you repeat that last</p> <p>22 part.</p> <p>23 MR. STUKENBERG: Sure.</p> <p>24 Q. There was nothing in the offer letters that</p> <p>25 were given to the linemen or mechanics that stated that</p>

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<p style="text-align: right;">Page 154</p> <p>1 they were guaranteed a gross-up in workweeks where they</p> <p>2 did not work a full workweek?</p> <p>3 MR. MOULTON: Objection, form.</p> <p>4 A. I don't remember there being any terminology</p> <p>5 like that.</p> <p>6 Q. Okay. You wouldn't do something that you felt</p> <p>7 was illegal, would you?</p> <p>8 A. If I felt like it was illegal, I would not be</p> <p>9 doing it.</p> <p>10 Q. Okay. And so you didn't have -- you didn't</p> <p>11 believe that you were doing anything wrong or illegal as</p> <p>12 it related to processing this payroll?</p> <p>13 A. I trusted my senior management and was</p> <p>14 confident in what they were telling me.</p> <p>15 Q. And you mentioned you got some calls and</p> <p>16 complaints from guys when their pay was wrong; is that</p> <p>17 right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. That's the nature of the complaints you got?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. You did not get calls with guys</p> <p>22 complaining that their compensation was off by a couple</p> <p>23 of pennies?</p> <p>24 A. No.</p> <p>25 Q. You did not get calls from guys complaining</p>	<p style="text-align: right;">Page 156</p> <p>1 adjustment to get you to your target compensation.</p> <p>2 Q. Okay. At the orientations where you would --</p> <p>3 where the compensation would be discussed with the</p> <p>4 linemen that you attended, you guys would show them what</p> <p>5 their target compensation would be. For example, you</p> <p>6 would show them that a general foreman is expected to be</p> <p>7 at that \$1,400 per day level, for example?</p> <p>8 A. Yes, sir. The offer letters, I believe, had</p> <p>9 the hourly rate plus the target compensation on them.</p> <p>10 Q. So the linemen, through the offer letters and</p> <p>11 the materials and what was told to them at orientation,</p> <p>12 knew what their expected compensation would be?</p> <p>13 A. They should have been aware. We did</p> <p>14 everything we could to make sure they understood the</p> <p>15 process.</p> <p>16 Q. So they understood that when they worked a</p> <p>17 full week, they're going to get that equivalent of</p> <p>18 \$1,400, or whatever it would be, a thousand times seven,</p> <p>19 correct?</p> <p>20 MR. STUKENBERG: Objection, form.</p> <p>21 MR. LOMBARDINO: Objection, calls for</p> <p>22 speculation. He doesn't know what's in their head.</p> <p>23 Q. That was the intent, to make sure that they</p> <p>24 would understand that?</p> <p>25 MR. STUKENBERG: Objection, form.</p>
<p style="text-align: right;">Page 155</p> <p>1 that they should have gotten paid more overtime?</p> <p>2 A. No. I mean, typically it either had to do</p> <p>3 with benefits not being entered correctly or the time,</p> <p>4 the adjustments. Those were the typical conversations I</p> <p>5 fielded.</p> <p>6 Q. Okay. But they weren't complaints that "I'm</p> <p>7 being paid in an unlawful manner" or anything along</p> <p>8 those lines?</p> <p>9 A. No, sir.</p> <p>10 MR. STUKENBERG: All right. I'll pass the</p> <p>11 witness.</p> <p>12 FURTHER EXAMINATION</p> <p>13 BY MR. MOULTON:</p> <p>14 Q. Mr. Kinsey, when you would get complaints from</p> <p>15 linemen about their checks, would you have occasion to</p> <p>16 explain to them the gross-up and how that worked?</p> <p>17 A. Yes. I mean, that was typically the nature.</p> <p>18 If they called and said, hey, I'm X dollars short or I</p> <p>19 think I'm -- sometimes it would just be as simple as,</p> <p>20 hey, my paycheck's short, would you look into it. And</p> <p>21 sometimes they would want to know why it was short, and</p> <p>22 then -- or they may go, hey, I'm looking at my pay stub</p> <p>23 and I'm confused, can you help me to understand it. And</p> <p>24 then I would walk them through the process of this is</p> <p>25 your hourly rate, and this is why, and this is the</p>	<p style="text-align: right;">Page 157</p> <p>1 A. The intent was that they knew what the target</p> <p>2 was and that we would do our best to get them there</p> <p>3 based on this hourly rate.</p> <p>4 Q. Right. And they also knew that if they didn't</p> <p>5 work a full week, that the company intended to also do</p> <p>6 the gross-ups for them?</p> <p>7 MR. LOMBARDINO: Objection, misstates</p> <p>8 prior testimony, misleading.</p> <p>9 MR. STUKENBERG: I'll object as well,</p> <p>10 form.</p> <p>11 A. The way I understood it is the employees</p> <p>12 expected to have a target compensation and the company</p> <p>13 was attempting to reach that.</p> <p>14 Q. Right. And so my question is, at orientation,</p> <p>15 did it ever come up what would happen if they didn't</p> <p>16 work a full week? Did you guys explain that?</p> <p>17 MR. STUKENBERG: Objection, form.</p> <p>18 MR. LOMBARDINO: Objection, calls for</p> <p>19 speculation.</p> <p>20 A. I don't remember. I would imagine that we</p> <p>21 would have discussed, just to try to head those</p> <p>22 conversations off at the onset. I won't say I did it at</p> <p>23 every one of them.</p> <p>24 Q. Okay. So fair to say that when it did come up</p> <p>25 or if it came up, you would have let them know about how</p>

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<p style="text-align: right;">Page 158</p> <p>1 you guys do the gross-up?</p> <p>2 MR. STUKENBERG: Objection, form. He just</p> <p>3 said he doesn't remember if it happened or not. You're</p> <p>4 asking him what he would do if -- go ahead.</p> <p>5 A. I did my best to make sure they understood the</p> <p>6 process. That way, when payday came, they either</p> <p>7 already had the answers to their questions or they would</p> <p>8 at least have something to build off of when they called</p> <p>9 me.</p> <p>10 Q. Earlier we were looking at a pay stub for</p> <p>11 Mr. Chappell where there was -- it looked like a</p> <p>12 gross-up had been missed, and you had mentioned that by</p> <p>13 looking at that pay stub, you were pretty sure that it</p> <p>14 had been one that you had missed. Can you explain why</p> <p>15 you said that.</p> <p>16 A. Because that pay period took place whenever we</p> <p>17 first got to the island and there was a steep learning</p> <p>18 curve.</p> <p>19 Q. Okay. So there was a little chaos and it</p> <p>20 could have been something got missed?</p> <p>21 A. We put roughly 300 people on the island in a</p> <p>22 matter of about two to three weeks, so yeah, there was a</p> <p>23 lot of chaos.</p> <p>24 Q. Okay. Were you privy to any communications</p> <p>25 that would have been sent to the linemen before</p>	<p style="text-align: right;">Page 160</p> <p>1 concerns with straight day rates and we had to pay</p> <p>2 hourly rates. And I don't know when in November that</p> <p>3 took place. I just know it took place.</p> <p>4 And then from that point forward, I was not</p> <p>5 supposed to enter just straight dollars per day. It was</p> <p>6 supposed to be hours per day. But at the very</p> <p>7 beginning, that was the communication, and that was why</p> <p>8 that vernacular just kind of carried through, because</p> <p>9 that way we weren't creating more confusion.</p> <p>10 Q. All right. And so there were linemen in the</p> <p>11 beginning who were hired before you had the standardized</p> <p>12 offer letters, for instance, that spelled out what their</p> <p>13 hourly rate would be. In other words, you had guys that</p> <p>14 got hired on just being told day rates?</p> <p>15 MR. STUKENBERG: Objection, form.</p> <p>16 A. I don't know specifically what the guys were</p> <p>17 communicated. I know a lot of guys were current,</p> <p>18 existing employees that got sent to Puerto Rico to work,</p> <p>19 and I don't know what they were -- how that was</p> <p>20 communicated.</p> <p>21 MR. MOULTON: I will pass the witness.</p> <p>22 MR. STUKENBERG: I've got a couple more</p> <p>23 questions unless, Mr. Lombardino, you'd like to go</p> <p>24 first.</p> <p>25 MR. LOMBARDINO: No, I don't have any</p>
<p style="text-align: right;">Page 159</p> <p>1 orientation, like recruiting emails? Did you ever see</p> <p>2 those?</p> <p>3 A. At some point I did. In the beginning I did</p> <p>4 not. In the beginning there was a lot of confusion as</p> <p>5 to what was being communicated to the linemen per some</p> <p>6 of the emails that we looked at earlier. I think there</p> <p>7 was one where Ken specifically said, I need to know what</p> <p>8 y'all communicated so that we can be on the same page.</p> <p>9 Q. Okay.</p> <p>10 A. As time progressed, we had developed kind of a</p> <p>11 consistent offer letter with company letterheads, so in</p> <p>12 theory, all we had to do was change the letterhead and</p> <p>13 the pertinent employee information, and that way</p> <p>14 everything was consistent across the board.</p> <p>15 Q. So on some of those earlier communications</p> <p>16 before it became standardized, were you aware of the</p> <p>17 communications going out to linemen telling them that</p> <p>18 they would be paid day rates?</p> <p>19 A. At the onset of the restoration effort, that</p> <p>20 was the case. It was communicated at the onset that</p> <p>21 individuals were going to be paid a day rate.</p> <p>22 Q. Okay.</p> <p>23 A. Once things had started -- the process had</p> <p>24 started and a lot more conversations were taking place,</p> <p>25 that's when it was communicated to me that there was</p>	<p style="text-align: right;">Page 161</p> <p>1 questions, so I will pass as well.</p> <p>2 FURTHER EXAMINATION</p> <p>3 BY MR. STUKENBERG:</p> <p>4 Q. You were just testifying about the</p> <p>5 orientations you attended where you said you would</p> <p>6 explain that there was a target rate for the guys to</p> <p>7 receive for every day worked, but that you would explain</p> <p>8 that it was hourly with overtime; is that correct?</p> <p>9 A. Yes. I'm confident that on that offer sheet</p> <p>10 that had their name, their classification, that there</p> <p>11 was a line item that said hourly rate.</p> <p>12 Q. Is there any doubt in your mind that it was</p> <p>13 communicated to these guys that they were being paid</p> <p>14 hourly with overtime rather than a day rate?</p> <p>15 A. To the best extent of my understanding, they</p> <p>16 were aware of an hourly rate.</p> <p>17 Q. Okay. And you-all did everything you could to</p> <p>18 explain that this was an hourly with overtime system to</p> <p>19 get to a target compensation level?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Mr. Moulton was asking you some questions</p> <p>22 about if you explained the gross-up, and I believe your</p> <p>23 testimony is you don't recall definitively one way or</p> <p>24 the other if you explained the gross-up process at</p> <p>25 orientation?</p>

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<p style="text-align: right;">Page 162</p> <p>1 MR. MOULTON: Objection, form.</p> <p>2 A. I believe that I did, but I can't say I did</p> <p>3 that at every orientation. I did a lot of orientations.</p> <p>4 Q. You think you did, but you're not sure one way</p> <p>5 or the other?</p> <p>6 A. Yes, sir.</p> <p>7 MR. MOULTON: Objection, form.</p> <p>8 Q. Okay. You were referring to the first payroll</p> <p>9 cycle where a gross-up was not paid, and you said you --</p> <p>10 you assumed it was a mistake just because you were</p> <p>11 processing so many people, so many new hires at that</p> <p>12 time; is that right?</p> <p>13 A. Yes, sir. I mean, there was a lot of existing</p> <p>14 employees transitioning, a lot of new employees being</p> <p>15 hired. It was a whirlwind chaos for the first month.</p> <p>16 Q. And you don't actually definitively know if</p> <p>17 that was a mistake or somebody consciously elected not</p> <p>18 to make an adjustment on that particular pay stub,</p> <p>19 right?</p> <p>20 MR. MOULTON: Objection, form.</p> <p>21 A. I would agree. I don't know definitively.</p> <p>22 Q. Okay. And there are instances well after the</p> <p>23 initial few payroll cycles where gross-ups were not</p> <p>24 paid, correct?</p> <p>25 MR. MOULTON: Objection, form.</p>	<p style="text-align: right;">Page 164</p> <p>1 a lot of moving parts at that time.</p> <p>2 I do want to clarify the previous -- not the</p> <p>3 most recent question, but the previous. I did attend at</p> <p>4 least one orientation with Higher Power sometime in the</p> <p>5 summer of 2018, but that's the only one I can remember.</p> <p>6 Q. And that was an orientation stateside?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And at that orientation, was it explained that</p> <p>9 it was hourly with overtime?</p> <p>10 A. I don't remember. I barely remembered that I</p> <p>11 was there.</p> <p>12 Q. Okay. Fair enough.</p> <p>13 You said initially the intention was to</p> <p>14 actually pay the non-exempt employees on a day rate</p> <p>15 system, right?</p> <p>16 A. That was the way I understood it.</p> <p>17 Q. Okay. And then at some point the decision was</p> <p>18 made not to pay them day rates but rather to pay hourly</p> <p>19 with overtime?</p> <p>20 MR. MOULTON: Objection, form.</p> <p>21 A. The way that was explained to me, yes.</p> <p>22 Q. And do you know one way or the other if that</p> <p>23 decision was made prior to any of the plaintiffs in this</p> <p>24 case actually deploying to Puerto Rico?</p> <p>25 A. I don't know who all is listed in this case,</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Per some of the earnings statements we looked</p> <p>2 at, yes.</p> <p>3 Q. And for those earnings statements, you don't</p> <p>4 know if that was an oversight on your part or somebody</p> <p>5 exercising discretion not to pay a gross-up in that</p> <p>6 instance, right?</p> <p>7 MR. MOULTON: Objection, form.</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. Are you aware that there were</p> <p>10 orientations held stateside before guys deployed?</p> <p>11 A. Yes.</p> <p>12 Q. You weren't at those orientations?</p> <p>13 A. I was not at any of them.</p> <p>14 Q. So you don't know what they were told at the</p> <p>15 orientations to the compensation system?</p> <p>16 A. No, sir.</p> <p>17 Q. Mr. Moulton was asking you about guys being</p> <p>18 told they were going to be paid day rates. Are you</p> <p>19 talking about they were told that as part of the</p> <p>20 recruiting process before being deployed to Puerto Rico?</p> <p>21 A. I don't really know what the conversations</p> <p>22 were like. Like I said, there was a lot of existing</p> <p>23 employees that were being asked to go to Puerto Rico to</p> <p>24 work, and then there was a lot of employees that were</p> <p>25 hired via reference, off the street. I mean, there was</p>	<p style="text-align: right;">Page 165</p> <p>1 so I don't know.</p> <p>2 Q. Do you know if the decision was made to pay</p> <p>3 hourly with overtime prior to when any of the linemen</p> <p>4 and mechanics deployed to Puerto Rico?</p> <p>5 A. I know we had employees on the island that got</p> <p>6 there before I did that were under the impression it was</p> <p>7 going to be a day rate, and then at whatever point in</p> <p>8 time it was, it was determined that was not the</p> <p>9 appropriate course of action, it was communicated to</p> <p>10 them, hey, you're not going to get paid a day rate.</p> <p>11 You're going to get paid an hourly rate, et cetera.</p> <p>12 Q. And that was the Advanced Team?</p> <p>13 A. Yes, sir. We had employees on the island</p> <p>14 middle of October before I was even hired.</p> <p>15 Q. Okay. And so for any of those employees that</p> <p>16 were on the day rate system, their pay stubs would</p> <p>17 actually reflect a day rate?</p> <p>18 A. It should, but I don't remember.</p> <p>19 Q. It would not reflect hourly with overtime like</p> <p>20 the pay stubs we've seen today?</p> <p>21 A. I don't believe it will. I was not</p> <p>22 responsible for those original timesheets, so I don't</p> <p>23 know what those look like.</p> <p>24 Q. And for the individuals that deployed under</p> <p>25 the prior compensation system, when the decision was</p>

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<p style="text-align: right;">Page 166</p> <p>1 made to modify to hourly with overtime, was that</p> <p>2 explained to them?</p> <p>3       A.   It should have been. I know I met with a</p> <p>4 bunch of those individuals, because there was a lot of</p> <p>5 issues between classifications and pay rates and</p> <p>6 benefits. So I know I met with them, but I can't</p> <p>7 definitively say we talked about it.</p> <p>8       Q.   Okay.</p> <p>9       A.   At least at that point in time.</p> <p>10      Q.   Okay. And once the decision was made to pay</p> <p>11 hourly with overtime, is it your understanding that</p> <p>12 everybody would have been told it was an hourly with</p> <p>13 overtime system to get to this target rate?</p> <p>14           MR. MOULTON: Objection, form.</p> <p>15      A.   It was supposed to be communicated down</p> <p>16 through the ranks. I know the superintendents were</p> <p>17 informed of that, and then the expectation is that they</p> <p>18 would communicate that to their subsequent subordinates.</p> <p>19      Q.   Okay. And that would be covered at</p> <p>20 orientation and in offer letters as well?</p> <p>21      A.   Should have been, yes. So for guys that were</p> <p>22 on the island when that decision was made, they wouldn't</p> <p>23 have gone through an additional orientation, but it was</p> <p>24 expected that their direct supervisor would have</p> <p>25 communicated that shift to them.</p>	<p style="text-align: right;">Page 168</p> <p>1 than I know that, hey, you're going to get paid and</p> <p>2 we're going to take care of you.</p> <p>3       Q.   Okay. And what do you mean by we're going to</p> <p>4 take care of you?</p> <p>5       A.   There was a target compensation and expected</p> <p>6 compensation, and that's what the company was seeking to</p> <p>7 obtain, reach. I mean, other than to say that they were</p> <p>8 going to pay them what they thought they were going to</p> <p>9 get paid, I don't know how else to say it.</p> <p>10      Q.   I think you said it.</p> <p>11           MR. MOULTON: Thank you. Pass the</p> <p>12 witness.</p> <p>13           MR. LOMBARDINO: No questions. Pass the</p> <p>14 witness.</p> <p>15           MR. MOULTON: You're done. Thank you very</p> <p>16 much. Again, we appreciate your time and --</p> <p>17           MR. LOMBARDINO: Actually, Will has an</p> <p>18 opportunity. You know, we go in a circle, so --</p> <p>19           MR. MOULTON: I thought he said pass.</p> <p>20           MR. LOMBARDINO: That was me.</p> <p>21           MR. MOULTON: Oh.</p> <p>22           MR. LOMBARDINO: And he might be done. I</p> <p>23 just want to --</p> <p>24           MR. STUKENBERG: I'll pass.</p> <p>25           THE REPORTER: Could I get everyone's</p>
<p style="text-align: right;">Page 167</p> <p>1       Q.   Okay. And we would probably be able to</p> <p>2 differentiate that population from the hourly with</p> <p>3 overtime population based on the hourly with overtime</p> <p>4 population pay stubs reflecting hourly rates and</p> <p>5 overtime rates, correct?</p> <p>6           MR. MOULTON: Objection, form.</p> <p>7       A.   I believe so, but again, I wasn't privy to</p> <p>8 those original timesheets, so I don't know.</p> <p>9           MR. STUKENBERG: I'll pass the witness.</p> <p>10           FURTHER EXAMINATION</p> <p>11 BY MR. MOULTON:</p> <p>12      Q.   Mr. Kinsey, when these initial guys that were</p> <p>13 on the island who were under that initial -- what you</p> <p>14 call the initial pay rate or day rate system, you</p> <p>15 mentioned to Mr. Stukenberg that at some point it was</p> <p>16 communicated to them that their pay would be hourly plus</p> <p>17 overtime, correct?</p> <p>18      A.   Yes, sir.</p> <p>19      Q.   It was also told to them about how their pay</p> <p>20 would be grossed-up if they worked less than a full</p> <p>21 week, correct?</p> <p>22           MR. STUKENBERG: Objection, form.</p> <p>23           MR. LOMBARDINO: Misstates prior</p> <p>24 testimony, foundation.</p> <p>25      A.   I don't remember all the conversation, other</p>	<p style="text-align: right;">Page 169</p> <p>1 order for the record. Does anyone want a copy?</p> <p>2           MR. STUKENBERG: I'll take a copy and a</p> <p>3 video, please.</p> <p>4           MR. LOMBARDINO: On behalf of the witness,</p> <p>5 we -- obviously we'd like a copy for reading and signing</p> <p>6 purposes, but no video needed. And you can send it to</p> <p>7 me at my office, my email. If you don't have the</p> <p>8 contact information, I can give it to you after --</p> <p>9           THE REPORTER: I'll find it. I can get</p> <p>10 it. Do you also want an electronic copy in addition to</p> <p>11 having him sign the original or just the original?</p> <p>12           MR. LOMBARDINO: So how do y'all do it</p> <p>13 these days? Do you actually mail an original like in</p> <p>14 the old days?</p> <p>15           THE REPORTER: I think it's electronic.</p> <p>16 They can just send the electronic original -- or I think</p> <p>17 that's what they do, and if you need to do something</p> <p>18 later, you can.</p> <p>19           MR. LOMBARDINO: That's fine. Yeah, send</p> <p>20 the electronic, and then we'll get it read and then --</p> <p>21 actually, I need signature for you.</p> <p>22           THE REPORTER: Yes. And real quick,</p> <p>23 Anthony, that Exhibit 221, are you the one that will be</p> <p>24 sending that to me?</p> <p>25           MR. ARTEAGA: Yes, ma'am, I will be</p>

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<p style="text-align: right;">Page 170</p> <p>1 sending it to you.</p> <p>2 THE REPORTER: Did you see my email in the</p> <p>3 chat?</p> <p>4 MR. ARTEAGA: Yes, ma'am, I did.</p> <p>5 THE REPORTER: Okay. Thank you. I think</p> <p>6 that's all I have.</p> <p>7 MR. LOMBARDINO: Dave, did you want a</p> <p>8 transcript?</p> <p>9 MR. MOULTON: Yes, of course. We'll do</p> <p>10 the standard electronic and we'll do video. I'll email</p> <p>11 you the exhibits we used.</p> <p>12 THE REPORTER: Yes. Okay.</p> <p>13 VIDEOGRAPHER: End of deposition. Off the</p> <p>14 record at 3:42.</p> <p>15 (Deposition concluded at 3:42 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 172</p> <p>1 I, JAMES D. KINSEY, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 JAMES D. KINSEY</p> <p>6</p> <p>7 THE STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9</p> <p>10 Before me, _____, on</p> <p>11 this day personally appeared JAMES D. KINSEY, known to</p> <p>12 me or proved to me under oath or through</p> <p>13 _____ (description of identity card or</p> <p>14 other document) to be the person whose name is</p> <p>15 subscribed to the foregoing instrument, and acknowledged</p> <p>16 to me that they executed the same for the purposes and</p> <p>17 consideration therein expressed.</p> <p>18 Given under my hand and seal of office this</p> <p>19 _____ day of _____, 2022.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>101</p> <p>102</p> <p>103</p> <p>104</p> <p>105</p> <p>106</p> <p>107</p> <p>108</p> <p>109</p> <p>110</p> <p>111</p> <p>112</p> <p>113</p> <p>114</p> <p>115</p> <p>116</p> <p>117</p> <p>118</p> <p>119</p> <p>120</p> <p>121</p> <p>122</p> <p>123</p> <p>124</p> <p>125</p> <p>126</p> <p>127</p> <p>128</p> <p>129</p> <p>130</p> <p>131</p> <p>132</p> <p>133</p> <p>134</p> <p>135</p> <p>136</p> <p>137</p> <p>138</p> <p>139</p> <p>140</p> <p>141</p> <p>142</p> <p>143</p> <p>144</p> <p>145</p> <p>146</p> <p>147</p> <p>148</p> <p>149</p> <p>150</p> <p>151</p> <p>152</p> <p>153</p> <p>154</p> <p>155</p> <p>156</p> <p>157</p> <p>158</p> <p>159</p> <p>160</p> <p>161</p> <p>162</p> <p>163</p> <p>164</p> <p>165</p> <p>166</p> <p>167</p> <p>168</p> <p>169</p> <p>170</p> <p>171</p> <p>172</p> <p>173</p> <p>174</p> <p>175</p> <p>176</p> <p>177</p> <p>178</p> <p>179</p> <p>180</p> <p>181</p> <p>182</p> <p>183</p> <p>184</p> <p>185</p> <p>186</p> <p>187</p> <p>188</p> <p>189</p> <p>190</p> <p>191</p> <p>192</p> <p>193</p> <p>194</p> <p>195</p> <p>196</p> <p>197</p> <p>198</p> <p>199</p> <p>200</p> <p>201</p> <p>202</p> <p>203</p> <p>204</p> <p>205</p> <p>206</p> <p>207</p> <p>208</p> <p>209</p> <p>210</p> <p>211</p> <p>212</p> <p>213</p> <p>214</p> <p>215</p> <p>216</p> <p>217</p> <p>218</p> <p>219</p> <p>220</p> <p>221</p> <p>222</p> <p>223</p> <p>224</p> <p>225</p> <p>226</p> <p>227</p> <p>228</p> <p>229</p> <p>230</p> <p>231</p> <p>232</p> <p>233</p> <p>234</p> <p>235</p> <p>236</p> <p>237</p> <p>238</p> <p>239</p> <p>240</p> <p>241</p> <p>242</p> <p>243</p> <p>244</p> <p>245</p> <p>246</p> <p>247</p> <p>248</p> <p>249</p> <p>250</p> <p>251</p> <p>252</p> <p>253</p> <p>254</p> <p>255</p> <p>256</p> <p>257</p> <p>258</p> 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